

1. 2-10-22 Agenda (PDF)

Documents:

[02-10-22 AGENDA.PDF](#)

2. 2-10-2022 Agenda Packet (PDF)

Documents:

[2-10-2022 AGENDA PACKET.PDF](#)



**CITY OF MARSHALL, TEXAS
REGULAR CITY COUNCIL MEETING
COUNCIL CHAMBERS, CITY HALL, 401 SOUTH ALAMO
THURSDAY, FEBRUARY 10, 2022, 6:00 P.M.**

This meeting will be conducted utilizing a video and audio conferencing tool, as well as, a standard conference call. Instructions and direct links to view the meeting or speak during Citizen Comment can be found at www.marshalltexas.net.

**AGENDA INFORMATION PACKET IS AVAILABLE FOR THE
PUBLIC TO REVIEW ON THE CITY'S WEB SITE AFTER 8:00 A.M.
ON WEDNESDAY BEFORE THE MEETING AT**

www.marshalltexas.net

1. **CALL TO ORDER AND ROLL CALL**
2. **INVOCATION AND PLEDGES**
3. **CITIZEN COMMENTS**

Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on an agenda the opportunity to do so before or during the body's consideration of the item. The "Citizens Comments" portion of the meeting meets the requirements of this law and is the public's opportunity to speak on any item on, or not on, the agenda. Those who wish to speak will have three minutes to do so unless additional time has been requested.

4. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**
5. **CONSENT AGENDA**

The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

- A. Consider approval of the minutes from the January 27, 2022 Regular meeting.
- B. Street Sweeping Activity Report. (Public Works Director)

- C. Public Works Activity Report. (Public Works Director)
- D. Consider approval of the Texas Subdivision and Special District Election and Release Form regarding the Texas settlement agreement against pharmaceutical manufacturer Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Endo International plc, Par Pharmaceutical, Inc., and Par Pharmaceutical Companies, Inc. (City Attorney)
- E. Municipal Court Activity Report. (Finance Director)
- 6. **PROCLAMATION**
 - A. Proclamation honoring Rev. Dr. Emmitt Theophilus “E. T.” Caviness. (Councilmember Calhoun)
- 7. **PUBLIC HEARING AND ORDINANCE**
 - A. Conduct a public hearing and consider an ordinance amending the official zoning map from PD (Planned Development) to MF (Multifamily) with SUP (Special Use Permit) for 3 story apartments located at 100 Park Place Drive. (Community & Economic Development Director)
- 8. **RESOLUTION**
 - A. Consider approval of a resolution designating the Interim City Manager as the Authorized Official for the 2020 Coronavirus Emergency Supplemental Funding (CESF) Grant. (Finance Director)
- 9. **CITY MANAGER REPORTS AND REQUESTS FOR CITY COUNCIL CONSIDERATION**
 - A. Consider approval of an expenditure in excess of \$50,000 for Project McKenzie. (Marshall EDC)
 - B. Consider approval of the Personnel Policy and Procedures Manual. (Human Resources Manager)
 - C. Financial update regarding Wonderland of Lights. (Finance Director)
 - D. Consider approval of a recommendation for appointment to the Planning & Zoning Commission. (Community & Economic Development Assistant Director)
 - E. Consider approval of a recommendation for appointments to the Visit Marshall Board. (Tourism & Cultural Arts Director)
- 10. **CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA**
- 11. **EXECUTIVE SESSION**
 - A. An Executive Session pursuant to Section 551.071 which authorizes a governmental body to consult with its attorney contemplated litigation; and on a matter in which the duty of the

attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

12. **ADJOURNMENT**

Posted: February 7, 2022
5:00 p.m.
N. Smith

This meeting will be conducted in accordance with the Americans with Disabilities Act. Requests for sign interpretive services will be available with at least 72-hour notice prior to the meeting. To make arrangements for these services, please call the City Secretary's Office at 903-935-4446.



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Page 10

C. Public Works Activity Report. (Public Works Director)

Page 13

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E. Municipal Court Activity Report. (Finance Director)

Page 21

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Page 47

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C. Financial update regarding Wonderland of Lights. (Finance Director)

Page 139

D. Consider approval of a recommendation for appointment to the Planning & Zoning Commission. (Community & Economic Development Assistant Director)

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E. Consider approval of a recommendation for appointments to the Visit Marshall Board. (Tourism & Cultural Arts Director)

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ITEM 1

CALL TO ORDER AND ROLL CALL

ITEM 2

INVOCATION AND PLEDGES

ITEM 3

CITIZEN COMMENTS

ITEM 4

ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA

ITEM 5A

CONSENT AGENDA

**CONSIDER APPROVAL OF THE
MINUTES FROM THE JANUARY 27,
2022 REGULAR MEETING**

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MARSHALL
THURSDAY, JANUARY 27, 2022
6:00 PM

Mayor Amy Ware called the Regular meeting to order in the Council Chambers, City Hall at 6:00 p.m.

PRESENT:

MAYOR: Amy Ware, District 4

COUNCIL MEMBERS:

Marvin Bonner, District 1
Jennifer Truelove, District 3
Amanda Abraham, District 6

Leo Morris, District 2
Vernia Calhoun, District 5
Micah Fenton, District 7

ADMINISTRATIVE STAFF PRESENT:

David Willard, Interim City Manager	David Reaves, Police Captain
Eric Powell, Public Works Director	Dawn Jones, Finance Director
Scott Rectenwald, Acting City Attorney	
Daniel Duke, Tourism & Cultural Arts Director	
Nikki Smith, City Secretary/Payroll Accountant	
Randy Pritchard, Support Services Superintendent	
Fabio Angell, Community & Economic Development Director	
Garnett Johnson, Assistant Community & Economic Development Director	

INVOCATION & PLEDGE: Mayor Ware

11. **CITIZEN COMMENTS**

Gayle Ewing Keys, 1203 B E. Grand Ave. #220, presented Council with a proposal for management of Wonderland of Lights for 2022.

12. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**

There were no items withdrawn from the Consent Agenda.

13. **CONSENT AGENDA**

Councilmember Calhoun made a motion to approve the Consent Agenda. Councilmember Truelove seconded the motion, which passed with a vote of 7:0.

- A. Consider approval of the minutes from the January 13, 2022 Regular meeting.
- B. Consider approval of a contract with the Harrison County Elections Administrator for the May 7, 2022 Election.
- C. Fire Department Activity Report.
- D. Police Department Activity Report.
- E. Community & Economic Developments Activity Report.
- F. Consider approval of Small Business Grant Fund Applications.

PUBLIC HEARING AND ORDINANCE

14. CONDUCT A PUBLIC HEARING AND CONSIDER AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP FROM A&E (AGRICULTURE AND ESTATE) TO C-3 (GENERAL BUSINESS) LOCATED AT 2711 WEST GRAND AVENUE.

Fabio Angell, Community & Economic Development Director, asked for the approval of an ordinance amending the official zoning map from A&E (Agriculture and Estate) to C-3 (General Business). Fabio Angell stated six notices were sent to residents within 200 feet of the site, no responses were received. The Planning and Zoning Commission approved the change by a vote of 5:0.

Mayor Ware opened the public hearing.

No one came forward to speak.

Mayor Ware closed the public hearing.

Councilmembers asked questions and discussed.

Councilmember Truelove made a motion to approve an ordinance amending the official zoning map from A&E (Agriculture and Estate) to C-3 (General Business). Councilmember Bonner seconded the motion, which passed with a vote of 7:0.

15. CONDUCT A PUBLIC HEARING AND CONSIDER AN AMENDMENT TO A PLANNED DEVELOPMENT THAT WAS APPROVED BY ORDINANCE O-88-14 BEING BLOCKS 1-4 OF THE JOHNSON ADDITION LOCATED AT 2005 DOGAN STREET.

Fabio Angell asked for the approval of an ordinance amending a Planned Development that was approved by Ordinance O-88-14. Fabio Angell stated 44 notices were sent to residents within 200 feet of the site, two responses for and two responses against the amendment were received. The Planning and Zoning Commission approved the change by a vote of 5:0.

Mayor Ware opened the public hearing.

Van Belafonte Friar, 1103 Staffordshire Rd, Stafford, TX, spoke in support of the amendment and stated his reasons for wanting to develop the property.

Tom McClurg, Harrison County Housing Authority, spoke in support of the amendment.

Mayor Ware closed the public hearing.

Councilmembers asked questions and discussed.

Councilmember Truelove made a motion to approve an ordinance amending the official zoning map from A&E (Agriculture and Estate) to C-3 (General Business) under the condition that before any new construction can be made on this site, the current building must be secured in accordance with code. Councilmember Fenton seconded the motion.

Councilmembers engaged in further discussion.

Councilmember Truelove withdrew her motion.

Councilmember Truelove made a motion to approve an ordinance amending the official zoning map from A&E (Agriculture and Estate) to C-3 (General Business). Councilmembers Calhoun seconded the motion, which passed with the following vote:

Ayes: 6, Mayor Ware, Councilmembers Truelove, Calhoun, Bonner, Abraham and Morris

Nays: 1, Councilmember Fenton

RESOLUTION

16. **CONSIDER APPROVAL OF A RESOLUTION ORDERING A GENERAL ELECTION FOR CITY COUNCILMEMBER DISTRICTS 5, 6 AND 7.**

Nikki Smith, City Secretary, asked for approval of a resolution ordering a General Election for City Councilmember Districts 5, 6 and 7. Nikki Smith highlighted the deadlines for the filing period, early voting dates and the location of the election to be held on May 7, 2022.

Councilmember Fenton made a motion to approve a resolution ordering a General Election for City Councilmember Districts 5, 6 and 7. Councilmember Truelove seconded the motion, which passed with a vote of 7:0.

17. **CONSIDER APPROVAL OF A RESOLUTION CALLING FOR A JOINT ELECTION AGREEMENT WITH THE MARSHALL INDEPENDENT SCHOOL DISTRICT FOR THE MAY 7, 2022 GENERAL ELECTION.**

Nikki Smith asked for approval of a resolution calling for a Joint Election Agreement with the Marshall Independent School District for the May 7, 2022 General Election.

Councilmember Truelove made a motion to approve a resolution calling for a Joint Election Agreement with the Marshall Independent School District for the May 7, 2022 General Election. Councilmember Fenton seconded the motion, which passed with a vote of 7:0.

CITY MANAGER REPORTS AND REQUESTS FOR CITY COUNCIL CONSIDERATION

18. **UPDATE REGARDING FINANCE DEPARTMENT UNDERTAKINGS.**

Dawn Jones, Finance Director, stated the Purchasing Specialist position has been filled. Dawn Jones stated various policies will be updated and brought to the Council for approval.

19. **CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA**

There were no items withdrawn from the Consent Agenda.

20. **ADJOURNMENT**

Councilmember Calhoun made a motion for adjournment. Councilmember Truelove seconded the motion, which passed with a vote of 7:0.

APPROVED:

**_____
Mayor of the City Council
of the City of Marshall, Texas**

ATTEST:

**_____
City Secretary**

**Ordinances: O-22-03
O-22-04
Resolutions: R-22-01
R-22-02**

ITEM 5B

CONSENT AGENDA

STREET SWEEPING ACTIVITY REPORT



TO: Members of the City Council

FROM: Eric Powell, PE *ESP*
Director of Public Works/City Engineer

DATE: February 2, 2022

SUBJECT: Street Sweeping Activity Report

The Street Sweeping Activity Report for the month of January 2022 is attached for your review.

NOTE: The Street Sweeper has been out of service for several weeks due to mechanical issues. We are working to get the equipment back in operation as soon as possible.

STREET SWEEPING ACTIVITY REPORT JANUARY 2022

STREET NAME	NUMBER OF TIMES SWEPT
Ambassador Blvd.	1
Austin St. (Downtown)	2
Bolivar St. (Downtown)	2
Burleson St. (Downtown)	2
Carter St.	1
S. College St.	1
Courthouse Square	2
Fisher Dr.	1
Gordon St.	1
Idylwild Terrace	1
Medill St.	1
Memorial Dr.	1
Merritt St.	1
Pine Burr Circle	1
Pine Burr Terrace	1
Rosborough Springs Rd.	1
Rusk St. (Downtown)	2
University Ave.	1
Warren Dr.	1
N. Washington Ave. (Downtown)	2
Wellington St.	1
Wildwood Terrace	1
Wiley Ave.	1

STREETS/AREAS SWEPT IN JANUARY: 23

ITEM 5C

CONSENT AGENDA

PUBLIC WORKS ACTIVITY REPORT



TO: Members of the City Council

FROM: Eric Powell, PE 
Director of Public Works/City Engineer

DATE: February 3, 2022

SUBJECT: Public Works Department Activity Report

The Public Works Department Activity Report for the month of December 2021 is attached for your review.

**PUBLIC WORKS DEPARTMENT
MONTHLY ACTIVITY REPORT
December 2021**

DEPARTMENT DIVISIONS	NUMBER OF REQUESTS
DISTRIBUTION/COLLECTION	
Water main breaks/service leaks	19
Water meters (leaks/repairs/replacements)	25
Sewer issues (wash service/repairs/surcharging manholes/general manhole maintenance/preventive maintenance/camera sewer lines)	203
Water/sewer taps	1
Emergency water meter cut-off/turn-on for residential & business customers	5
STREETS	
Pothole patching/dress-ups/other repair (<i>Note: Asphalt plant closed for 2 weeks in December</i>)	244
Right of way & empty lot mowing: <i>Carters Ferry Rd., Medill St., Booker St., State St., Blanche St., Beacham St., Ralph St., Herbert St., Alvin St., White St., Highbridge St., Stanley St., Ralph St., Holmes rd., Martin St., S. Garrett St., Stephens St., E. Burseson St., E. Rusk St., Jackson St.</i>	20
Illegal dumping	4
Clearing fallen trees from City streets	2
Clear blind intersections: <i>University Ave./White St., Pemberton St./Beacham St., Rusk St./Bishop St., Twyman St./Poplar St.</i>	
Street repairs at water main break sites	8
Trim low hanging limbs: <i>Morrison St., Louisiana St., Dallas St., Locust St., Bowie St., Van Hook St., Wellington St., Crockett St., Ambassador Blvd., Pinewood Dr., Rosewood Circle, Idylwild Terrace, Merrill St., Forest Trail, Redwood Trail, Arlington Rd., Caddo St., Mae Dr., Virginia St., Spruce St., George Gregg St., Wright St.</i>	22
ROW/COMMUNITY APPEARANCE	
Litter pick-up (medians, cemeteries, City facilities)	12
General lawn care (City facilities, cemeteries, median, rights-of way)	14
Illegal dumping	0
SPECIAL PROJECT: <i>This crew worked evenings during Wonderland of Lights (train, carousel, ice rink, etc.)</i>	
DRAINAGE	
Cleaning/digging ditches (<i>total of 1590 feet</i>)	8
Checking traps & drains	3
Storm drain clearing/repairs/sinkhole repairs	21
Culvert installation/repairs	6
Bridge/sidewalk/curb repairs	0
<i>(Also assisted the Street Division with trimming of low hanging limbs)</i>	
INFORMATION TECHNOLOGY TECHNICIAN	
Computer, internet, phone, email, alarm issues, Zoom meetings, etc.	301
BUILDING MAINTENANCE TECHNICIAN	
HVAC	17
Plumbing	14
Electrical/Lighting	13
Wonderland of Lights/Other Miscellaneous	24

CITY PROJECT UPDATES:

1) TRAVIS ST. WATER MAIN IMPROVEMENT PROJECT:

- The contractor is completing the final tie-ins at Columbus St. @ Travis St.
- Final trench repairs and area cleanup to be completed by mid-February.

2) STREET IMPROVEMENT PROGRAM – 2021

- The 2021 street program is now wrapping up. Work on two streets that were on the list (Pierce St. and Wilson St.) have been postponed due to the discoveries of 2” water mains located only a few inches below the road surfaces.

3) ANIMAL SHELTER

- Final punch list items have been completed by the contractor.
- We will be scheduling a meeting between myself, the Interim City Manager, and representatives from Shelter Planners of America, to discuss final closeout of the project.

4) PUBLIC WORKS BREAKROOM RENOVATION

- Pricing for the renovations has been received from two local contractors.
- The next step is to have a discussion with the Finance Director to find additional funds to cover the cost of the renovation.

5) POLICE STATION ROOF ISSUE

- We will be meeting again soon with local roofing contractors to obtain pricing for the needed repairs.

6) AIRPORT PARK

- Recently met with representatives from MYBA & MYSA to discuss the upcoming baseball/softball season.
- Fencing options for the park have been discussed.
- We will obtain pricing for paving all parking lots in 2022.

7) LIBRARY PARKING LOT

- We will be obtaining pricing to remove old asphalt, re-pave, and re-stripe the parking lot in April/May 2022

2021 Street Improvement Program
List of Streets for Reconstruction and Overlay

OVERLAY							
STREET	FROM	TO	Current PCI	Length	Width (Avg.)	Tons	Area
Adair St	Yaney	End	23	675	15	124	1,125
Bledsoe St	Winston	End	11	844	18	186	1,688
Bledsoe St	Winston	Billups	55	750	26	238	2,167
Bruckmiller St	N. Franklin	Grove	32	773	20	189	1,718
Chatham St	Lancaster	End	24	967	24	281	2,552
Cobb St	Yaney	End	10	638	22	172	1,560
S Columbus	E Travis	Poag	25	475	26	151	1,372
Fair St	SWEPCO SubStation	Dead End	0	500	20	122	1,111
Frazier St	Ray	Bruckmiller	16	214	20	52	476
Hynson Springs Rd	Ward	North St	25	763	20	187	1,696
Joyce St	Grace	Terry	25	734	20	21	189
Lafayette St	E Houston	E Crockett	33	914	38	425	3,859
Lafayette St	E Travis	Dead End	30	474	24	139	1,264
Lakeview Dr	Beth Ann	County Line	53	3955	24	1,160	10,547
Lancaster St	Lane Lewis	Achie	35	3615	20	884	8,033
Lane Lewis St	Pincrest	Lancaster	25	622	20	128	1,160
Levin St	Shaw	Ralph	10	241	18	53	482
Louisiana St	Henderson	Summit	22	1099	18	242	2,198
Martin Lake Road	HWY 59	120 Frontage		4061	28	1,360	12,634
Marshall St	Hwy 80	N. Allen	33	1039	34	432	3,925
Medill St	Gordon	Rebrough Springs	30	1580	30	579	5,267
N. Allen	Marshall St	W Houston	31	766	40	374	3,404
Pierce St	Jefferson	End	40	200	20	49	444
Poag St	S Columbus	S Garrett	54	317	22	85	775
Poplar St	6th	N Bolivar	4	4566	40	2,232	20,293
Ray St	Franklin	Frazier	60	401	20	98	891
W Rusk	Marshall St	Parker St	31	385	30	141	1,283
Rebrough Springs	Medill	W Meredith	31	1215	40	594	5,400
Shaw St	Levin	Ralph	27	279	20	68	620
Terry St	Pincrest	Joyce	40	395	20	97	878
Ward St	Adair	Hwy 80 (Grand)	21	740	24	217	1,973
Wiley Ave	University	Medill	30	1142	40	558	5,076
Wilson St	University	Abel	29	515	28	176	1,602
Winston St	Bledsoe	Holland	28	378	24	111	1,008
Young St	W Rusk	W Houston	48	1070	24	314	2,853

LEGEND

- Completed Roads
- Rescheduled Roads to 2022 - 2" main replacement
- Roads changed due to curbing issues
- Added roads

ITEM 5D

CONSENT AGENDA

**CONSIDER APPROVAL OF THE TEXAS
SUBDIVISION AND SPECIAL DISTRICT
ELECTION AND RELEASE FORM
REGARDING THE TEXAS SETTLEMENT
AGREEMENT AGAINST
PHARMACEUTICAL MANUFACTURER
ENDO HEALTH SOLUTIONS INC., ENDO
PHARMACEUTICALS INC., ENDO
INTERNATIONAL PLC, PAR
PHARMACEUTICAL, INC., AND PAR
PHARMACEUTICAL COMPANIES, INC.**

Exhibit A**TEXAS SUBDIVISION AND SPECIAL DISTRICT
ELECTION AND RELEASE FORM**

This Election and Release Form for Texas Participating Subdivisions¹ resolves opioid-related Claims against Endo/Par under the terms and conditions set forth in the Endo/Par Texas State-Wide Opioid Settlement Agreement between Endo/Par, the State of Texas, and the Counties of Dallas, Bexar, Harris and Tarrant (the “Agreement”), the provisions of which are here incorporated by reference in their entirety. Upon executing this Election and Release Form, a Participating Subdivision agrees that, in exchange for the consideration described in the Agreement, the Participating Subdivision is bound by all the terms and conditions of the Agreement, including but not limited to the Release found in Section VII of the Agreement and the provisions concerning participation by Subdivisions or Special Districts in Section VIII, and the Participating Subdivision and its signatories expressly represent and warrant on behalf of themselves that they have, or will have obtained on or before the Effective Date or on or before the execution of this Election and Release Form if executed after the Effective Date, the authority to settle and release, to the maximum extent of the Subdivision’s and Special District’s power, all Released Claims related to Covered Conduct. If this Election and Release Form is executed on or before the Initial Participation Date, the Participating Subdivision shall dismiss Endo/Par and all other Released Entities with prejudice from all pending cases in which the Participating Subdivision has asserted Covered Claims against Endo/Par or a Released Entity no later than the Initial Participation Date. If this Election and Release Form is executed after the Initial Participation Date, the Participating Subdivision shall dismiss Endo/Par and all other Released

¹ The Agreement defines a “Participating Subdivision” as a Subdivision or Special District that signs this Election and Release Form and meets the requirements for becoming a Participating Subdivision under subsection VIII.A. of the Agreement.

Entities with prejudice from all pending cases in which the Participating Subdivision has asserted Covered Claims against Endo/Par or a Released Entity concurrently with the execution of this form. By executing this Election and Release Form, the Participating Subdivision submits to the jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation*, MDL No. 18-0358, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas.

Dated: _____

Texas Subdivision Name: _____

By: _____

[NAME]

[TITLE]

[ADDRESS]

[TELEPHONE]

[EMAIL ADDRESS]

ITEM 5E

CONSENT AGENDA

MUNICIPAL COURT ACTIVITY REPORT

Monthly Report For Jan 2022

Cases Filed

STEP Site	Traffic	Penal	City Ordinance	Parking	Other	Total
0	119	19	3	2	10	153

Financial

State Costs	City Costs	Fines	Tech Fund	Bld Security	Total
\$10,994.04	\$7,412.22	\$8,577.36	\$1,896.80	\$8,278.70	\$37,159.12

Trials/Hearings

Jury	Bench	Appealed	Total
0	83	0	83

Warrants

Issued	Recalled	Served	Fees Collected	Amount Collected	Outstanding
39	52	43	\$1,857.45	\$12,766.02	\$2,518,513

Dispositions

Paid	Time Served	Dismissed	Appealed	Total
107	63	37	0	218

Update on Municipal Court recent plan to reduce inactive cases January 2022 Report

The city website for municipal court is continuing to be updated as the court coordinator sets the dockets. Office Jose Burciaga is making contact with defendants on the warrant list and serving warrants on defendants while incarcerated. Judge Brendan Roth seen 20 jail defendants that was arrested on warrants and onsite city charges. These inmates were seen from January 1st to January 31st. There were five inmates that posted cash bonds before they seen the Judge Roth. The municipal court collection agency (MVBA) is working on scheduling a warrant roundup in March on all the inactive warrants. The municipal court is still getting good result from the FTA program. The court administrator has set up text messages to notify defendants of due dates, court dates, warrant notice, etc.

Court for January:

January 12th at 8:30am for Juvenile Plea and 9:30am Adult plea

Juvenile pleas started at 9:10am with 11 scheduled. There were 7 no shows and 4 were ordered to pay their fine. Juvenile docket ended at 9:30am.

Adult plea started at 9:41am with 53 scheduled. There were 10 no shows, 11 paid fines, 9 were taken inconsideration with their other fines, 2 dismissed due to proof of DL and no sign posted, 8 were approved for community work service, 3 approved for defensive driving course, and 4 were approved to take the child safety course within 90 days, 2 Plead for cash bonds, 1 hired an attorney, 1 requested bench trial, and 2 were reset for next week docket. Court ended at 11:45am

January 19th at 8:30am for Adult plea

Adult plea docket started at 8:40am with 13 scheduled. 2 no shows, 2 were issued fines, 2 cash bond pleas, 3 dismissed for removal of window tint and were being compliant with services, 1 requested bench trial, 1 approved for child safety class, and 2 approved for defensive driving . Court ended at 9:16am

Show cause was held at 9:30am

There was 3 scheduled and all 3 were no shows. A warrant was issued for 1 defendant and 2 defensive driving were revoked.

January 26th at 8:30am for Adult trials

10 trials were scheduled. 2 no shows, 1 plead not guilty and was found guilty by Judge Roth, 2 were dismissed, and 5 were ordered to pay.

Court for February 2022

February 02, 2022-Show cause hearings @8:30AM

February 09, 2022 –Adult plea docket @8:30AM/Show Cause Docket @9:30AM

February 16, 2022- Adult plea @ 8:30AM/City code @8:30AM/Show cause hearings @9:30AM

February 23, 2022-

Tara Archield

Municipal Court Administrator

- OCA monthly report data compiled from the **June 2021** report (submitted **07/30/2021**) revealed the following data:

Active cases:	575
Inactive cases:	5,208

- OCA monthly report data compiled from the **July 2021** report (submitted **07/30/2021**) revealed the following data:

Active cases:	595
Inactive cases:	5,156

- OCA monthly report data compiled from the **August 2021** report (submitted **08/30/2021**) revealed the following data:

Active cases:	538
Inactive cases:	5,136

- OCA monthly report data compiled from the **September 2021** report (submitted **09/30/2021**) revealed the following data:

Active cases:	577
Inactive cases:	5,058

- OCA monthly report data compiled from the **October 2021** report (submitted **11/01/2021**) revealed the following data:

Active cases: 551

Inactive cases: 5,015

- OCA monthly report data compiled from the **November 2021** report (submitted **12/02/2021**) revealed the following data:

Active cases: 668

Inactive cases: 4,981

- OCA monthly report data compiled from the **December 2021** report (submitted **01/04/2022**) revealed the following data:

Active cases: 640

Inactive cases: 4,991

- OCA monthly report data compiled from the **January 2022** report (submitted **02/02/2022**) revealed the following data:

Active cases: 635

Inactive cases: 4,960

ITEM 6A

PROCLAMATION

PROCLAMATION HONORING REV. DR. EMMITT THEOPHILUS “E. T.” CAVINESS

PROCLAMATION



WHEREAS, Rev. Dr. Emmitt Theophilus “E. T.” Caviness was born on May 23, 1928 to Will Spon and Lulu Page Caviness-Calvin, the youngest of five brothers and a sister (who passed away early in life) raised in Marshall, Texas; and

WHEREAS, Rev. Dr. E. T. Caviness graduated from Pemberton High School, Bishop College, Eden Theological Seminary in Webster Grove, MO, and received honorary doctorate degrees from Virginia Seminary and College and Central State University in Wilberforce, Ohio; and

WHEREAS, Rev. Dr. E. T. Caviness gave his first sermon at Galilee Baptist Church in Marshall, Texas at the age of seventeen; and

WHEREAS, Rev. Dr. E. T. Caviness began preaching at Cleveland, Ohio’s Greater Abyssinia Baptist Church in 1961; and

WHEREAS, Rev. Dr. E. T. Caviness has fought for human and civil rights in the spirit of civil rights leader Dr. Martin Luther King Jr.; and

WHEREAS, Rev. Dr. E. T. Caviness stated in an interview with the *Marshall News Messenger* that he was inspired “to try to do something in my lifetime to try to bring people together instead of trying to keep them separated with bars”; and

WHEREAS, Rev. Dr. E. T. Caviness received the 2019 MLK Community Award from the Cleveland Orchestra, was honored with an exhibit of his life at the Cleveland History Center, and whose footprints are enshrined at the International Civil Rights Walk of Fame in Atlanta, Georgia; and

WHEREAS, Rev. Dr. E. T. Caviness was appointed to chair Cleveland’s zoning board of appeals by Carl B. Stokes, the nation’s first African American mayor, and Chairman of the Ohio Civil Rights Commission by former Ohio Governor George Victor Voinovich; and

WHEREAS, Rev. Dr. E. T. Caviness is currently serving as president of the Greater Cleveland Chapter of the Southern Christian Leadership Conference;

NOW, THEREFORE, I, Councilwoman Vernia Calhoun, do hereby proclaim February 9, 2022, as “*Rev. Dr. E. T. Caviness Day*” in Marshall, Texas. I, along with the entire community, would like to offer our thanks for your service and honor you as a native Marshall civil rights leader.

Presented this 9th day of February 2022.

Vernia Calhoun, Councilmember
Marshall City Council



ITEM 7A

PUBLIC HEARING & ORDINANCE

**CONDUCT A PUBLIC HEARING AND
CONSIDER APPROVAL OF AN
ORDINANCE AMENDING 100 PARK
PLACE DRIVE FROM PLANNED
DEVELOPMENT TO MULTIFAMILY
WITH SPECIAL USE PERMIT**



City Council Agenda Information Sheet

February 10, 2022

Agenda Item Z-22-01:

Conduct a public hearing to consider a rezoning request for 7.63 acres of land in the James Harris A-12 and the Bethany Rogers A-20 Surveys. From PD(Planned Development) to MF(Multifamily) with SUP(Special Use Permit) for 3 Story Apartments. Located at 100 Park Place Drive.

Applicant	Jeff Haygood 322 Gilmer St. Sulphur Springs TX 75482
Property Owner	GVD Harvest Creek LLC 322 Gilmer St. Sulphur Springs TX 75482
Surrounding Property Notices	10 Notices Sent within 200 ft of the Site 0 Responses back
Existing Zoning	PD (Planned Development)
Proposed Zoning	MF (Multifamily Planned Development)

On January 10, 2022 The Planning & Zoning Commission recommended approval by a vote of 6-0-0.

Location Map:



Background & Summary of Request:

The Applicant is requesting a zoning change to construct an apartment complex.

Picture of the Site:**Existing Conditions:**

The subject property is vacant.

	Zoning Classification	Land Use
North of the Property	A-E (Agricultural-Estate) R-2 (Single Family detached)	Single-family residences
East of the Property	PD (Planned Development) vacant property.	vacant
South of the Property	PD (Planned Development)	Single Family Residences
West of the Property	PS (Public Service)	Church

Water service to the site is provided by an existing 16" water main along the south side of Victory Drive, a 6" inch water main along Park Place Drive. Sewer service is provided by 6" sewer main in Park Place Drive.

Comprehensive Plan and Future Land Use Analysis:

The 2018 Future Land Use Map identifies the property as Moderate Density Residential. The land use may also include well designed compact development such as duplexes and low density multifamily, typically less than 14 units per acre. The future land use designation is to allow for the types of neighborhood development found in Marshall's established single-family neighborhoods, compatibility

areas, and adjacent to mixed-use. The request complies with Marshall's Strategic Plan under Economic Development item number 4. Establish alternatives for senior housing (full spectrum).

The following questions should be answered when determining if a zoning change is appropriate:

1. Will the proposed change be in compliance with the goals of the Comprehensive Plan? *The proposed change would be in compliance with the Comprehensive Plan. Objective 3: Establish the Moderate Density future land use designation to allow for the type of neighborhood development found in Marshall's established single-family neighborhoods, compatibility areas, **and adjacent to mixed-use and commercial areas.** Strategies a. Development may include single-family residential development on small lots, duplexes, townhomes, and **low-density multifamily dwellings.** b. Development should be within and adjacent to Marshall's existing neighborhoods. c. Residential development with a variety of housing styles, types and prices that is compatible with adjacent development is encouraged. d. Infill development should respond to existing development with compatible patterns, and design standards. e. New residential development should be organized to promote walkability, including sidewalks, and ideally should locate all residences a five to ten minute walk from neighborhood-serving retail and other amenities such as parks and school facilities. f. Places of worship, parks, and open space are allowed by right. g. The character of this area should be maintained by ensuring that new development is sensitive to the surrounding built and natural context in scale and form as described above*
2. Will there be an adverse impact on surrounding property if the request is approved? In evaluating this question, consideration should be given to all permitted uses in the proposed new zoning and the impact it could have on surrounding property. *The surrounding property is primarily developed with single-family homes a church, and agricultural uses. There will be more traffic in the area but that is expected with a multi-family development.*
3. Is the property suitable for use as it is currently zoned or does the zoning need to be changed to allow the property to be put to use in a way that is in keeping with the surrounding activities. *The property is currently surrounded by single-family and agricultural uses and a church..*
4. What is the relationship of the proposed change to the health, safety and welfare of the general community? In other words, will the change make the community better or is it merely for the convenience of the owner? Will surrounding property owners suffer or lose any enjoyment in the area of their property as a result of this change? Does the proposed change seem to be a logical extension of similar types of development? *Through the development standards proposed, the applicant is attempting to protect the surrounding property owners from any possible nuisances the development could impose.*

Suggested Motions:

1. Motion to recommend approval of case number Z-22-01 as requested.
2. Motion to recommend approval of case number Z-22-01 with conditions.
3. Motion to recommend denial of case number Z-22-01.

Attachments:

1. Proposed Concept Plans
2. Proposed Concept Plans street View

3. Site Plan
4. Aerial of Site
5. Pictures of the Site
6. 200 Foot Notification Map
7. Planned Development 1981 map
8. Planned development approved 5-10-2021
9. Ordinance Z-22-01



HARVEST CREEK APARTMENTS
MARSHALL, TEXAS

AERIAL
NTS



STREET VIEW
NTS

HARVEST CREEK APARTMENTS
MARSHALL, TEXAS

SITE DATA
-CURRENT ZONING: AGRICULTURE AND ESTATE (A-E)
PROPOSED ZONING: MULTIFAMILY RESIDENTIAL (MF)
-148 UNITS
-7.63 ACRES
-19.39 UNITS/ACRE

UNIT TABULATION			
UNIT TYPE	# UNITS	UNIT NET S.F.	TOTAL NET S.F.
A1 - ONE BEDROOM, ONE BATH	30	550 S.F.	16,500 S.F.
A2 - ONE BEDROOM, ONE BATH	24	628 S.F.	15,072 S.F.
A3 - ONE BEDROOM, ONE BATH	18	720 S.F.	12,600 S.F.
B1 - TWO BEDROOM, TWO BATH	36	917 S.F.	33,012 S.F.
B2 - TWO BEDROOM, TWO BATH	20	976 S.F.	19,520 S.F.
B3 - TWO BEDROOM, TWO BATH	20	1,044 S.F.	20,880 S.F.
TOTAL	148		117,584 S.F.

BUILDING TABULATION				
TYPE	# BLDGS.	UNITS/BLDG.	UNIT TYPES	TOTAL S.F.
A	3	20	A1-6, A3-6, B1-4, B3-4	46,032 S.F.
B	2	20	A2-6, B1-6, B2-4, B3-4	34,700 S.F.
C	2	24	A1-6, A2-6, B1-6, B2-6	36,852 S.F.
TOTAL	7			117,584 S.F.

PARKING TABULATION	
PARKING REQUIRED	
1.5 PER UNIT (148)	
TOTAL REQUIRED	222
PARKING PROVIDED	
RESIDENTIAL	225
HC	2
VAN HC	4
CLUB	10
VAN HC	2
TOTAL PARKING PROVIDED	243

BUILDING KEY

2

A

- BUILDING NUMBER

- BUILDING TYPE

..... ACCESSIBLE PATH

BUILDING KEY

86'-3"

63'-6"

CLUBHOUSE

139'-7 1/2"

73'-8"

BUILDING TYPE 'A'

163'-1 1/2"

79'-0"

BUILDING TYPE 'B'

156'-5 1/2"

71'-4 1/2"

BUILDING TYPE 'C'

Page 35
Cross
architects

HARVEST CREEK APARTMENTS
MARSHALL, TEXAS

A1.0
SITE PLAN
Copyright © 2021



CITY GOLF
COURSE

A&E

R-2

MF

PD

CHURCH

SUBJECT PROPERTY

C-3

PD

Z-22-01
Site Pictures



Single Family to the south



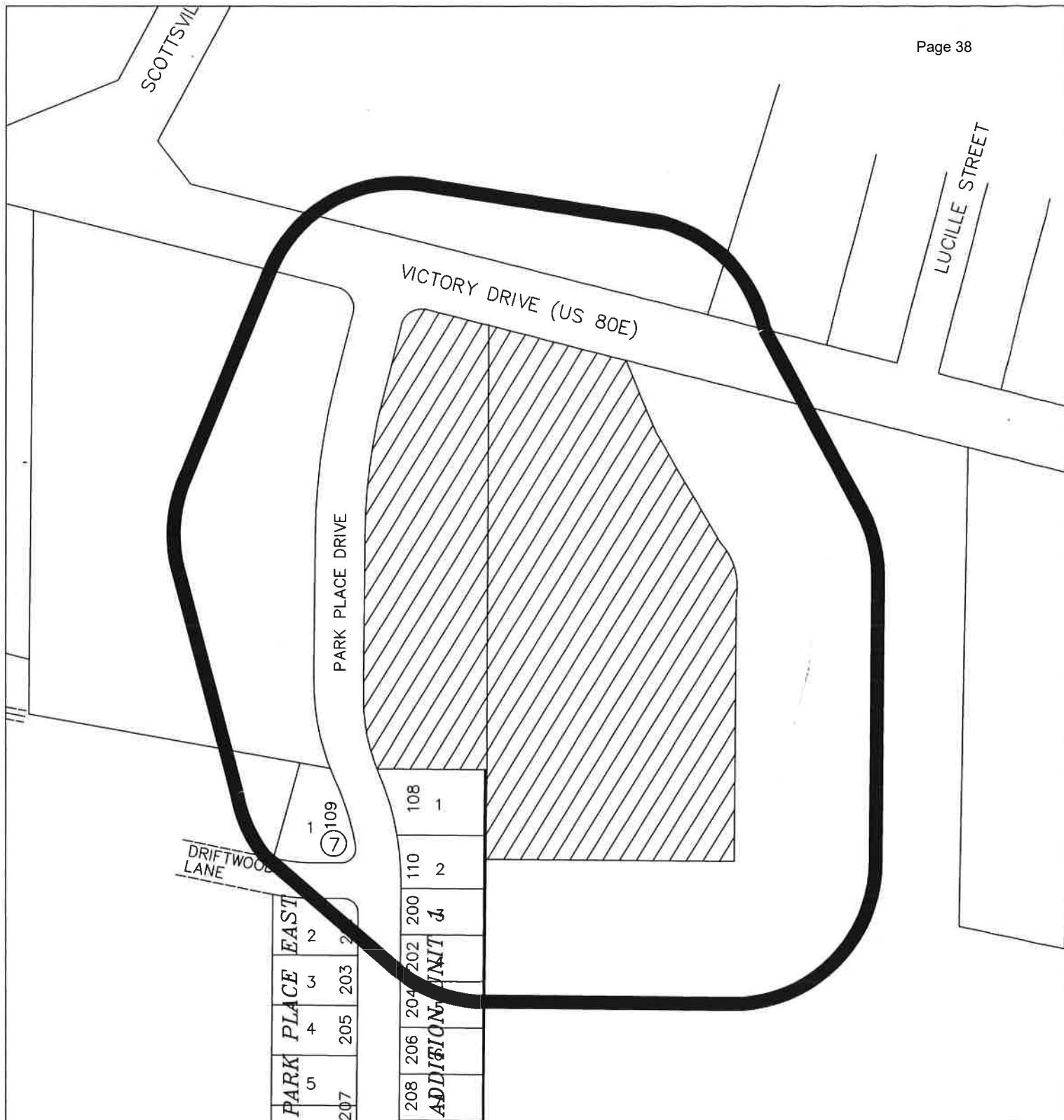
Single family Residential to the north



Vacant to the East



Church to the west



Case No. Z-22-01

Scale: 1"=200'

Date: 1-10-2022

PLANNING DEPARTMENT
CITY OF MARSHALL, TEXAS

Remarks: A request to rezone 7.63 acres of land in the James Harris Survey A-12 and the Bethany Rogers Survey A-20 from PD Planned Development to MF (Multifamily) with SUP (Special Use Permit) for 3 Story apartments

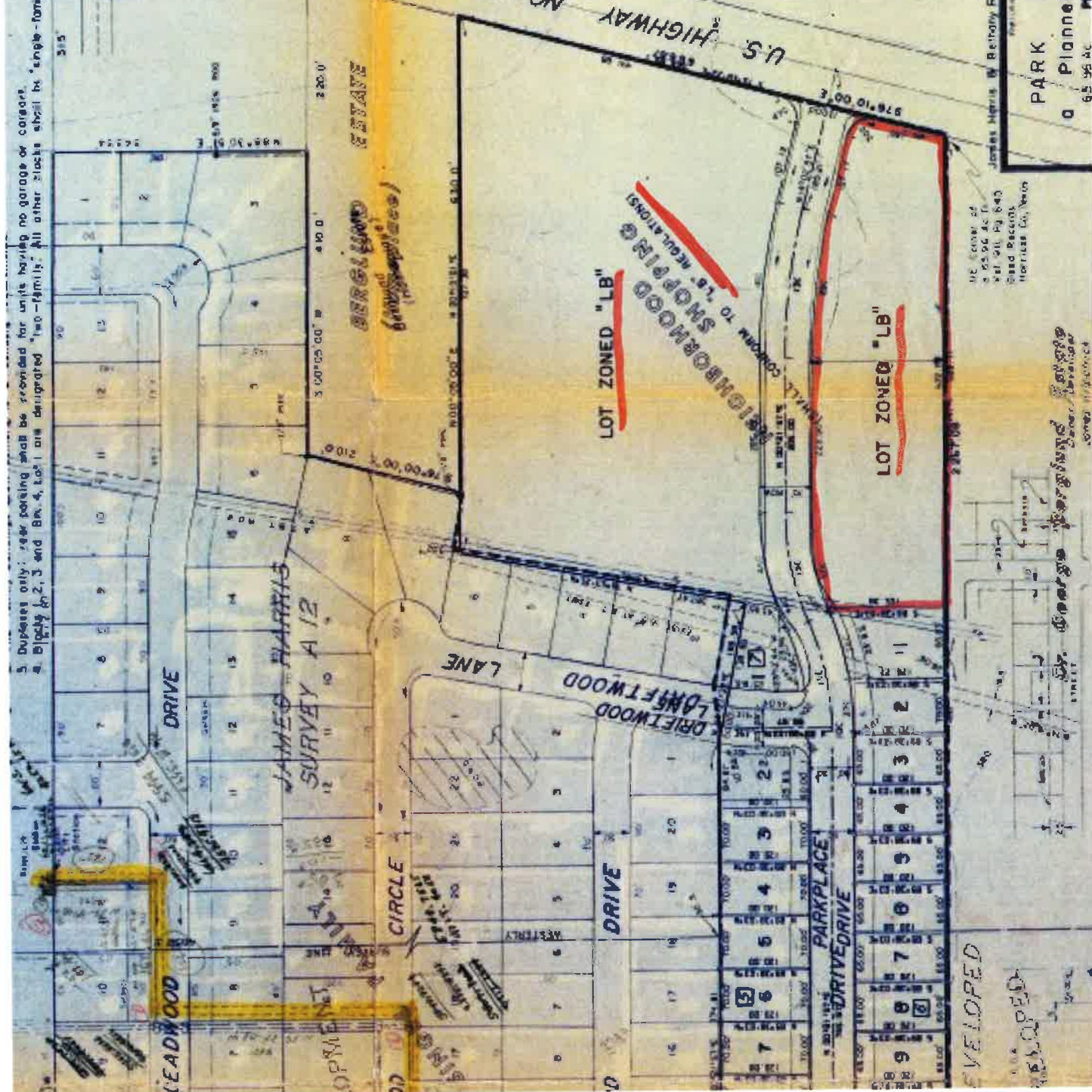
Applicant: Jeff Haygood
Location: 100 Block of Park Place Drive

LEGEND

5. Duplexes only; rear parking shall be provided for units having no garage or carport.
 a. Bldgs. 2, 3 and Bm. 4, 5, 6, 7 are designated "two-family". All other blocks shall be "single-family".

- 3/8" Iron Bar Set for Steps
- Exist. Property Corner Point
- Adjacent Property Line
- Exist. Property Line
- Building Setback Line
- Block Number Within Sheet

3



JOHN HARRIS & BETTIE HARRIS, Surveyors
 03/04/2010 02:30:45

PARK PLACE - EAST
 a Planned Development

65 96 AC PREPARED BY

U.S. Survey of
 65 96 AC Tr.
 541 011 Pg. 840
 Grand Rapids,
 Michigan Co., Mich.

DEVELOPED

DEVELOPED



Location: 5100 Block Victory Drive

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 0-87-13 TO REZONE 7.63 ACRES OF LAND IN THE JAMES HARRIS A-12 AND THE BETHANY ROGERS A-20 SURVEYS. FROM PD(PLANNED DEVELOPMENT) TO MF(MULTIFAMILY) WITH SUP(SPECIAL USE PERMIT) FOR 3 STORY APARTMENTS. LOCATED AT 100 PARK PLACE DRIVE.

WHEREAS, the City of Marshall enacted zoning on December 13, 1951 and amended said ordinance on July 7, 1963 and on March 26, 1987 repealed and replaced all ordinance with Ordinance No. 0-87-13 amending the Code of Ordinances of the City of Marshall to add Chapter 32 regarding Zoning; and

WHEREAS, a Zoning District Map was adopted as a part of Ordinance No. 0-87-13; and

WHEREAS, Chapter 32, Section 14 of the Code of Ordinances established a procedure for a property owner, his agent, or the City to request zoning district map amendments; and

WHEREAS, the Planning & Zoning Commission, after due and proper notice in the manner and for the length of time required by law, held a public hearing for the purpose of considering proposed changes to the Zoning District Map; and

WHEREAS, after the close of said public hearing and pursuant thereto, the Planning & Zoning Commission filed a written report with the City Council, recommending changes in the Zoning District Map; and

WHEREAS, pursuant to said report and after notice in the manner and for the length of time required by law, the City Council held a public hearing in Marshall, Texas at City Hall on the 10th day of February, 2022, at 6:00pm for the purpose of considering the requested Zoning Map change, and at which hearing all property owners, interested parties, and interested citizens had an opportunity to be heard; and

WHEREAS, the City Council, after considering the proposed changes and after hearing all parties and citizens desiring to be heard, deems that the following changes are necessary and for the best interest of the general welfare of the citizens of the City of Marshall, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF MARSHALL, TEXAS THAT:

Section 1. The facts and opinions in the preamble of this ordinance are true and correct.

Section 2. Rezone A 7.63 Acres Of Land In The James Harris A-12 And The Bethany Rogers A-20 Surveys. From Pd(Planned Development) To (Multifamily) With Sup(Special Use Permit) For 3 Story Apartments. Located At 100 Park Place Drive.

Section 3. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

PASSED on the 10th day of February, 2022.

AYES: ____

NOES: ____

ABSTAINED: ____

MAYOR OF THE CITY COUNCIL
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

CITY SECRETARY

ITEM 8A

RESOLUTION

**CONSIDER APPROVAL OF A
RESOLUTION DESIGNATING THE
INTERIM CITY MANAGER AS THE
AUTHORIZED OFFICIAL FOR THE 2020
CORONAVIRUS EMERGENCY
SUPPLEMENTAL FUNDING (CESF)
GRANT**



CITY OF MARSHALL

COMMISSION AGENDA INFORMATION SHEET

MEETING DATE:

PROJECT: Coronavirus Emergency Supplemental Funding (CESF) Grant 2020

DESCRIPTION: Designate Authorized Official for the 2020 CESF grant.

COST: none

RECOMMENDED

ACTION: Authorized resolution designating the City Manager as Authorized Official.

CITY CONTACT: Finance Director Dawn Jones

cc: File

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS AUTHORIZING REDESIGNATION OF THE AUTHORIZED OFFICIAL FOR THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING GRANT FOR THE 2020 GRANT YEAR.

WHEREAS, the City of Marshall applied for and was previously approved for the Coronavirus Emergency Supplemental Funding grant; and

WHEREAS, the previous authorized official, Mark Rohr, is no longer employed with the City of Marshall; and

WHEREAS, to expend the remaining funds in the Coronavirus Emergency Supplemental Funding grant the City must designate a new authorized official; and

WHEREAS, City Commission designates the City Manager as the grantee’s authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the City of Marshall; and

WHEREAS, City Commission agrees that in the event of loss or misuse of the Office of the Governor funds, City of Marshall assures that the funds will be returned to the Office of the Governor in full;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MARSHALL THAT:

1.

The Commission of the City of Marshall hereby authorizes the designation of the City Manager as the Authorized Official for the Coronavirus Emergency Supplemental Funding grant for the 2020 grant year.

2.

The Commission of the City of Marshall confirms that City intends to use the grant for future anticipated overtime expenses and for the purchase of equipment in compliance with the terms and conditions of the grant to assist the City in responding to the COVID-19 emergency.

3.

The findings set forth in the preamble to this resolution are hereby in all things approved.

4.

The meeting at which this resolution was passed was conducted in strict compliance with the Texas Open Meetings Act (Texas Government Code Chapter 551).

5.

All other prior resolutions or portions of resolutions of the City of Marshall in conflict with the terms and provisions of this resolution are hereby repealed to the extent of such conflict only.

6.

This resolution shall be effective on and after its passage.

PASSED, APPROVED, AND ADOPTED THIS THE _____ DAY OF _____, 2022.

Amy Ware, Chairman

ATTEST:

Nikki Smith, City Secretary

ITEM 9A

**CONSIDER APPROVAL OF AN
EXPENDITURE IN EXCESS OF \$50,000
FOR PROJECT MCKENZIE**

February 2, 2022

The Honorable City Council of Marshall, Texas
P.O. Box 698
Marshall, Texas 75670

The Marshall Economic Development Corporation (Marshall EDC) has requested to appear before the City Council on February 10, 2022, for consideration of an expenditure in excess of \$50,000 for Project McKenzie.

This is a unique expenditure for a program developed by Marshall EDC in response to blighted structures downtown and the desire to encourage private investment in targeted areas in coordination with the City of Marshall. After consultation with former City management, discussion by the Board of Directors and Ex-Officio members, review with the Small Business Development Center, and advice provided by financial and development professionals, Marshall EDC is prepared to offer its first grant authorized under the Certificate of Occupancy Bonus Program. I have enclosed guidelines for the program. These criteria meet statutory requirements of a Type A EDC for site improvements.

Marshall EDC has been in communication with the Project McKenzie prospect who plans to own and operate a new sales tax generating private business at 108 W Houston. The prospect's ownership is under a contract of sale. More details of that business will be provided at the meeting. The initial estimates indicate a cost of construction and site improvements over \$1.2 million. This building is currently in a state of disrepair and deterioration of its primary structures amongst other issues. It has been determined to be blight by the Marshall EDC Board of Directors and an economic or social liability to the municipality.

Marshall EDC approved a grant of up to the lesser of \$100,000 or 10% of construction costs required to obtain a Certificate of Occupancy (CO) from the City of Marshall. Should no CO be issued, likewise, no grant shall be administered. Upon successful completion of the CO, the grant funding will be released within 30 days of receipt and confirmation from the City of Marshall. Marshall EDC respectfully requests your consideration of approval to expend EDC funds for this project.

Thank you for the opportunity to present this project before the City Council of Marshall.

Respectfully,



Rush Harris
Executive Director
Marshall Economic Development Corporation



Certificate of Occupancy Bonus Program

2022

Certificate of Occupancy Bonus Program:

Overview:

The Certificate of Occupancy Bonus Program (COB) is a site improvement reimbursement grant program funded by the Marshall Economic Development Corporation (Marshall EDC) to encourage site improvements by the private sector for new and expanded businesses producing sales tax in blighted downtown structures within certain target areas. The program offers an approved applicant and project, a lump sum limited award after successfully obtaining an authorized Certificate of Occupancy (CO) from the City of Marshall. The program was developed to complement City of Marshall objectives under the Mobilize Marshall Plan to improve the appearance around the downtown square area along Houston St and north along North Washington Ave, while also encouraging growth in the tax base. Program development was performed by EDC staff under approval of the Board of Directors and comments from Ex-Officio Board Members, including the City Manager, Mayor, and Mayor Pro-Tem. Applications for this program were received by EDC staff.

Targeted Area:

- The immediate downtown area forming the square around the historic Harrison County Courthouse along Houston St.
- North Washington from Houston St to Grand Ave.
- See Exhibit A.

Goals:

- Reduce blighted structures in the targeted area.
- Encourage private investment by businesses that produce goods and/or services subject to sales tax.

What It Is, In General:

- This is a targeted effort to work with the City of Marshall on blighted areas of interest, not brownfields (brownfields require voter approval by statute).
- This is an effort focused on site improvements for new or expanding businesses that directly generate sales tax with improvements that fall under the guidelines of assistance a Type A EDC can legally provide.
- If the business/applicant receives a CO, they will receive the grant withing 30 days. If the CO is never obtained, no funds are provided.

What It Is Not, In General:

- This is not a loan.
- This is not a grant provided by City Government (Marshall EDC is a 501 c3 non-profit).
- This is not a fund for demolition and/or repairs of residential structures, commercial dwellings, public property, or non-profit owned/leased structures.
- This is not a fund assisting with amateur or professional sports.
- This is not for the construction of public/private parks, new building structures, basic remodeling, or a façade fund.

- Marshall EDC does not authorize COs. That is a City of Marshall function. Marshall EDC will not provide guidance or recommendations regarding design, nor does Marshall EDC provide assurances that a CO will be granted by the City.

Grand Funding Available:

- A total of \$200,000 for the 2022 year has been allocated to this program.

Program Grants Basics:

- A single grant may cover up to the lesser of \$100,000 or 10% of construction cost as preliminarily estimated and subsequently verified to obtain a CO. The 10% is strictly based on the lesser of the preliminary estimate or the subsequently verified amounts. This is done to maintain the program budget.
- The COB grant may be rescinded if actual construction ceases for a period of 60 days in the opinion of the Marshall EDC Board of Directors.
- Approved COB grants terminate after 12 months, unless reauthorized by Marshall EDC on a case-by-case basis pending construction timelines.
- A COB grant may transfer with successors or assigns on a case-by-case basis.
- Applicants must enter into an agreement with Marshall EDC regarding the grant.
- **IF A CO IS NOT ISSUED BY THE CITY OF MARSHALL, THE APPLICANT WILL NOT RECEIVE THE COB REIMBURSEMENT GRANT NOR ANY PARTIAL PORTION THEREOF.**

Requirements:

1. An approved project must be for a business whose primary function and source of income are derived from providing goods and/or services subject to sales tax.
2. The property must be determined to be a blighted area (blight) as determined by the Marshall EDC board of directors.
3. The applicant(s) must be the registered 100% undivided interest owner(s) of the structure or have a contract of sale that is executed by a legal conveyance prior to issuance of the CO.
4. The property in question must not have any back taxes owed or outstanding liens.
5. The applicant must not have any back taxes owed or outstanding liens.
6. The property must include a blighted building that is the subject of substantial repair. This is not a program for vacant lots, parking lots, or foundations/concrete slab at grade. Nor is it a program for upgrading décor, amenities, minor upgrades, basic remodeling, or minor fixes to bring a structure up to code.
7. An applicant is preferred to be the owner or legal owner representative of the business. An applicant owner that leases to a business that produces goods and/or services may be applicable on a case-by-case basis as determined by the EDC Board of Directors.
8. The applicant must agree to consultation with the Small Business Development Center prior to any approval and authorize Marshall EDC to contact SBDC personnel regarding that project discussion.
9. The applicant must submit an application to Marshall EDC.
10. The applicant must submit proforma financial statements to Marshall EDC prior to approval.
11. The applicant must submit a letter of how the project will be completed with or without financing and include cost estimates and timelines for construction.
12. If approved, applicants must submit certified final invoice construction costs.
13. If a loan is obtained, EDC staff must review public documents pertaining to the loan.
14. Applicants must be approved by the EDC Board of Directors.

15. Any award over \$50,000 must be approved by the City Council of Marshall, Texas.
16. The applicant must abide by all local, state, and federal laws, rules, and regulations and obtain documentation required by each.

Definitions in General:

Blight:

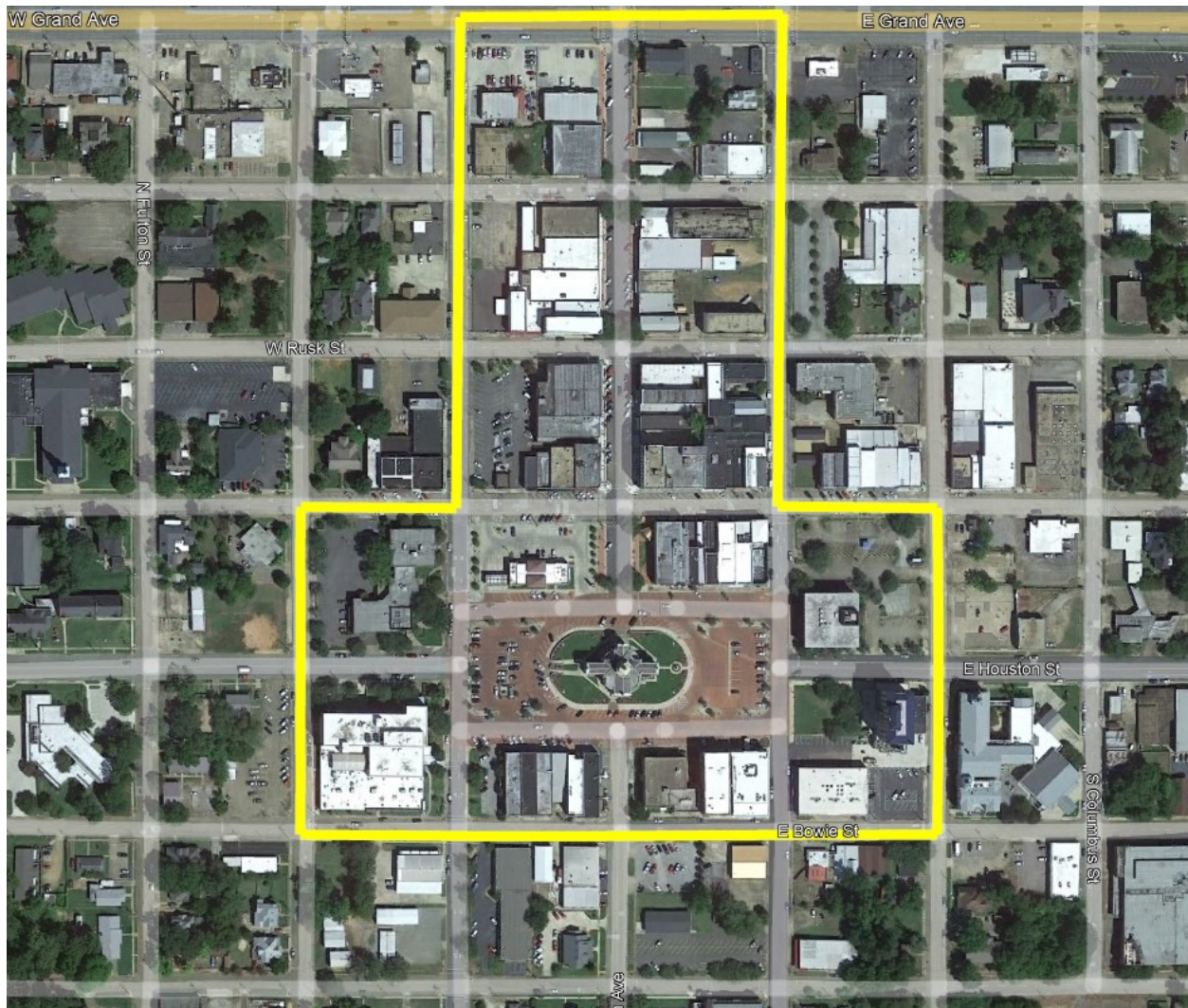
Blight will be determined by approval of the Marshall EDC Board of Directors at their discretion under the guidance provided by Local Government Code Title 12, Subtitle A, Chapter 374, Subchapter A, Section 374.003. Said sections states "Blighted area" means an area that is not a slum area, but that, because of deteriorating buildings, structures, or other improvements; defective or inadequate streets, street layout, or accessibility; unsanitary conditions; or other hazardous conditions, adversely affects the public health, safety, morals, or welfare of the municipality and its residents, substantially retards the provision of a sound and healthful housing environment, or results in an economic or social liability to the municipality. The term includes an area certified as a disaster area as provided by Section 374.903.

Area of Interest:

Defined by 2021 City Management and EDC joint discussions as the area immediately around the Historic Harrison County Courthouse along Houston St. and continuing to north along North Washington Ave to Grand Blvd.

EXHIBIT A

Area of Interest for COB Program



ITEM 9B

**CONSIDER APPROVAL OF THE
PERSONNEL POLICY AND
PROCEDURES MANUAL**



PERSONNEL
POLICY AND PRODCEDURES
MANUAL

ADOPTED

PREAMBLE

This Personnel Policy Manual is intended to assist all City of Marshall employees in understanding their benefits and the operational limits arising from their employment with the City. The underlying philosophy is that an informed employee is best able to serve the citizens of Marshall.

With the adoption of this Policy Manual, an attempt has been made to inform and educate each employee in its contents. In some cases individual departments may have additional rules, regulations, and/or criteria affecting an employee's access to some benefits. It is the responsibility of each employee to familiarize themselves with all applicable provisions of this Manual, and any/all departmental rules.

The Human Resources staff is available to assist all employees in the interpretation and application of these policies. It is the goal of the City Manager that all employees receive the total of benefits due them and that a positive work environment is maintained.

Your suggestions toward achieving the above goal are welcome and may be submitted to the Human Resources Manager/Civil Service Director.

CAVEAT

This manual (including any modifications) is prepared for informational and guideline purposes only and does not constitute a contract in any respect between the City of Marshall and its employees. Employment with the City is at will, and either the employee or employer may terminate the relationship at any time for any or no reason. The City Manager may remove with or without cause any employee of the City who is not appointed by the City Council. This removal authorization is subject to any exceptions in the applicable provisions of Civil Service laws for police officers and firefighters and the city charter.

This document supersedes any previous handbook, written policies, practices, and oral representations or statements and can only be modified in writing by the City Manager. The City Manager may unilaterally amend, modify, or remove these policies at any time with or without advance notice.

All statements in this manual regarding the at-will status of City employees or any benefits provided herein shall control any contradictory statements by any other person, whether oral or written. The at-will status of any employee may not be modified or rescinded by any oral or written statements by any person, including appointed or elected officials, any employee handbooks, employment applications, City of Marshall memoranda, or other materials provided to employees in connection with their employment. Similarly, the City's policies and practices with respect to any matter or any benefits now offered may be terminated at any time and are not to be considered as creating any contractual obligation on the City's part.

Statements of specific grounds for termination set forth in this manual or in any other City documents are examples only, are not all-inclusive lists, and are not intended to restrict the City's right to terminate at will.

Completion of an introductory or probationary period or "regular status" does not change an employee's status as an employee-at-will or any way restrict the City's right to terminate such an employee or change the terms or conditions of employment.

PERSONNEL POLICY & PROCEDURES MANUAL

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1 - INTRODUCTION

1.1 PURPOSE

- 1.1.1 General.** The City of Marshall realizes that the most valuable asset and resources are employees and that the success of City operations depends on the City attracting and retaining the best employees. It is the City's goal to treat employees equitably and to create and maintain an open and honest atmosphere regarding personnel matters.

The City may add to, modify, or rescind any of the provisions of this personnel manual or discontinue it in its entirety at any time for any reason, with or without advance notice. In addition, it is not possible for the City to foresee all situations and circumstances, which may arise which make the strict application of the policies set out in this manual inappropriate. Therefore, the City reserves the right to depart from the policies set forth in this manual from time to time as determined by the City in its sole discretion.

- 1.1.2 Not a Contract of Employment.** This manual is not a contract, express or implied, guaranteeing employment for any specific duration. Although the intention is to develop a long-term relationship with each employee, either the employee or the City may end the employment relationship at any time, for any reason, with or without cause. No supervisor, director, or the City Manager has the authority to enter into any agreement with an employee for employment for any specified period or to make any promises of future or continued employment.

1.1.3 Additional Personnel Policies and Procedures

- A. Supplemental Directives.** The City Manager may, from time to time, establish written administrative directives to supplement the provisions of this manual.
- B. Department Policies and Procedures.** Individual departments may establish written procedures and directives for their department such as general orders, standard operating procedures, etc., to govern operations which are specific to their department. All departmental personnel procedures and directives must be approved by the City Manager and filed with Human Resources.
- C. Procedures.** The City Manager may, from time to time, approve such written procedures as may be necessary to implement the policies set out herein, or any supplemental directives which have been approved by the City Manager pursuant to paragraph (A) above. A copy of any additional procedures shall be distributed to all department Directors and kept on file with Human Resources. Nothing contained herein shall be construed to prohibit a department director to issue appropriate departmental directives concerning terms and conditions of employment.

1.2 HUMAN RESOURCES

1.2.1 General. The Human Resources Manager/Civil Service Director is responsible for the day-to-day administration of these policies, and the procedures approved to implement these policies, under the direction and supervision of the City Manager.

1.2.2 Duties of the Human Resources Manager/Civil Service Director

- A. Administer the personnel program as set out in this manual, any written administrative directives relating to personnel matters established by the City Manager, and written department rules, regulations, orders and operating procedures, except as outlined by state and local government regulations.
- B. Recommend revisions to this manual and to written administrative policies, department rules, regulations, orders and operating procedures, and respond to recommendations for revisions from other employees.
- C. Administer the City compensation and classification plan.
- D. Review and recommend revisions to the City compensation and classification plan so that the plan continues to reflect the current duties and responsibilities for each position, and the appropriate pay therefore.
- E. Create and maintain all required personnel records, including all required civil service records.
- F. Develop and administer recruiting and testing programs as may be necessary to obtain an adequate supply of competent applicants for City positions. The Civil Service Director is responsible for admissions and promotion of classified employees as outlined under Texas Local Government Code, Civil Service and department regulations.
- G. Prepare, certify and forward personnel changes to payroll, from information provided by each department.
- H. Administer the City's Workers' Compensation and Employee Benefits program and respond to Unemployment claims on behalf of the City.
- I. Perform other City personnel functions as apparent or required.

1.3 PERSONNEL RECORDS AND MEDICAL RECORDS

1.3.1 General. Personnel and medical records are considered confidential records by the City except as set out below. Written personnel and medical records will be kept in locked areas accessible only to the Human Resources staff and the City Manager. Requests for access to personnel or medical records must be directed to the Human Resources Manager/Civil Service Director. For further information covered under the Health Insurance Portability and Accountability Act (HIPAA), see section six (6).

1.3.2 Access to Personnel Records

- A. **Public Information Defined.** An employee's date of hire, position, and terms of compensation are generally open records under state statute and under these policies.
- B. **Employee.** An employee's personnel file is accessible to the employee during normal business hours. An employee may review the file in the Human Resources office in the presence of an employee in that office. The Human Resources Manager/Civil Service Director may note in the employee's file that the employee reviewed the file and the date on which that review occurred.

- C. **Employment Action.** An employee's personnel file is accessible to the employee's supervisor, the department director, the City Manager, and the Human Resources Manager/Civil Service Director for all purposes related to the employee's employment with the City.
- D. **Law or Court Order.** An employee's personnel file may also be accessible to courts and to federal and state agencies, as may be required by court order or federal or state statute or regulation. A copy of the court order requiring production of information or documents from an employee's personnel file shall be placed in the file.
- E. **Defense of Action against City.** The City may access an employee's personnel file when necessary to defend the City against any lawsuit or charges filed against the City or its officers or employees with a court or with a state or federal agency.

1.3.3 Access to Medical Records

- A. **General.** An employee's medical records are kept separately from the employee's personnel records. Employees' medical records are closed records except as further set out in this section. Even when access would be allowed under this section, access to medical records will not be allowed when a request is made for access to an employee's personnel records and the request does not specifically request access to the employee's medical records.
- B. **Employee.** An employee's medical records are accessible to the employee during normal business hours.
- C. **Employment Action or Defense of Action.** Access to an employee's medical records for the purposes set out in paragraphs (C) and (E) in section 1.3.2 above will be allowed only when it is demonstrated that medical information is relevant to the purpose for which the request is being made.
- D. **Court Order.** Access to an employee's medical records will be allowed in response to a court order when that order specifies that access to medical records is to be allowed.
- E. **Workers' Compensation and Other Insurance.** Access to an employee's medical records will be allowed for purposes of processing any claims made by the employee under workers' compensation or other insurance on a need-to-know basis.

2 - EMPLOYMENT

2.1 APPOINTMENTS

2.1.1 General. This policy and its provisions shall apply to all positions unless otherwise stated in the Texas Local Government Code. It is the commitment of the City to provide equal opportunity with regard to all phases of the hiring process.

2.1.2 Advertising a Vacant Position. The hiring Manager/Supervisor submits a Requisition through the Online Hiring Center (OHC) in the current HR software to be approved by the Department Head, Finance, and Human Resources. Upon approval, a vacancy announcement is prepared by Human Resources. The vacancy announcement is posted on the City's website and any additional resources deemed necessary such as other internet sites, professional organizations, newspapers, trade journals, and/or in special publications. Vacancies will be posted for a total of two weeks. Week One: Internal candidates only. Week Two: External applicants. NOTE: For referral list with three (3) or more qualified internal candidates, the department designee must interview, make selection or deny all candidates prior to receiving an external list.

2.1.3 Applications. The City of Marshall accepts applicants only from the city's online employment application system and for positions that are currently open. Individual departments may request that applicants for a position or positions within that department be required to complete supplemental application forms specific to the department or to the position for which application is made. Supplemental applications must be approved by the City Manager and filed with the Human Resources Manager/Civil Service Director.

2.1.4 Reviewing Applications. All applications meeting minimum qualifications for a position will be forwarded to the department immediately upon the closing of the time period given for the filing of applications for the vacant position, or, in the case of positions which remain open until filled, upon request of the department director. The Human Resources Manager/Civil Service Director shall determine which applicants meet the minimum qualifications for the position. Applicants meeting the minimum qualifications and who are suitable for city employment as evidenced by factors including but not limited to previous employment history, job-related knowledge, skills and abilities, the department will interview all applicants who have been forwarded over by Human Resources.

Each department, in cooperation with Human Resources, may conduct such other procedures including testing, background checks, contacting of references, and post-offer physical examination (as further set out in these policies) as it deems appropriate for evaluating applicants for the vacant position. Departments may give preference to hiring applicants who are current employees of the City and may choose to promote or hire from within the City without advertising outside the City.

The Human Resources Manager/Civil Service Director shall assist the department in monitoring the selection process to ensure that the City's obligations under applicable statutes and regulations prohibiting discrimination in employment are met and to assist the department in selecting the most appropriate candidate.

2.1.5 Rejection or Discontinuation of Processing Application

The following are grounds for rejection or discontinuance of processing of a job application. Although not intended to be an exhaustive list, examples for grounds of rejection or discontinuance of processing of a job application include, but are not limited to, the following and may occur at any time in the employment process.

1. **Physical or Mental Impairment:** Inability of the applicant to perform the essential duties of the job due to medical, psychological, or physical impairments, even with reasonable accommodations.
2. **Minimum Requirements:** Failure to meet the minimum requirements for the position as prescribed by the Human Resources Manager/Civil Service Director.
3. **Falsification, Deception, Fraud:** Falsification of any material fact or any attempt to practice deception or fraud by the applicant on the application and/or supplements, during interviews with any representative of the City, during examinations, or during any phase of the employment process.
4. **Nepotism:** Failure to disclose familial relationships is grounds for disqualification and/or discharge.
5. **Incomplete Processing or Documentation:** Failure to report for interviews or examinations and failure to provide information or documentation requested by the City.
6. **Closing Date:** Failure to submit an application by the posted closing date.
7. **Driving Record:** Failure to meet the City's driving requirements for those positions which require the operation of equipment in the performance of their duties.
8. **Criminal History:** Conviction, deferred adjudication, or placement on probation for a felony or crime other than traffic violations where such underlying conduct is a risk to the City of Marshall or where such history is in conflict with the responsibilities and duties of the job.
9. **Neglect of Debts:** Failure to pay or neglect of just debts.
10. **Previous Disciplinary Action:** Although not intended to be an exhaustive list, examples for grounds of rejection or discontinuance of processing of a job candidate include, but are not limited to, the following:
 - a. Involuntary termination from previous employer(s) for inadequate performance of duties
 - b. Misconduct
 - c. Job abandonment
 - d. Attendance-related problems
 - e. Insubordination
 - f. Fighting
 - g. Violation of safety rules
 - h. Theft of employer property
 - i. Using, soliciting, or possessing alcohol or drugs while at work
11. **Work Schedule:** Inability or unwillingness of the applicant to work the required work schedule.
12. **Work History:** History of instability as evidenced on the completed application and supplements.
13. **Incomplete Application:** Failure to complete the application and supplements in the manner prescribed.
14. **Examinations:** Inability to pass all required examinations.
15. **Civil Service Classified or Unclassified:** 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 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 inappropriate or illegal activity, whether detected or undetected, whether prosecuted or not, whether convicted or not, 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 or alcohol;
 3. Sexual assault or misconduct;
 4. Assault or other violent offenses, including family violence;
 5. Bribery or other corrupt practice;
 6. Perjury or other falsification;
 7. Other inappropriate or 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.
- a. Prior civil action, whether litigated, 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.
- b. 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 seminude for publication or public display, or ownership, management, or employment in a sexually-oriented business;
 2. Public espousal of membership in or a 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.

2.1.6 Reference Checks

1. **Applicants:** Before an offer of employment is approved to a potential applicant, a minimum of two (2) reference checks or a minimum of five (5) years of work history shall be verified. Unfavorable references may eliminate a candidate from further consideration of employment.
2. **Current or Previous Employees:** All requests for information, written or verbal, from persons outside the City concerning job applicants and/or current, retired, or terminated employees must be referred to Human Resources.

Such requests shall include but not be limited to:

- a. Verification of employment for loan and/or credit application.
- b. Verification of employment status.
- c. Salary verification or information.
- d. Verification of work and/or attendance records.
- e. Prior work history.

Without a signed release, Human Resources will release only the dates of employment, position held, and final salary. Except for the City Manager, no other person is authorized to release such information.

Letters of Recommendation written for a current, retired, or terminated employee must be approved by the Human Resources Manager/Civil Service Director prior to being released. A copy of the letter shall become a portion of the employee's file.

- 2.1.7 Hiring an Applicant.** Once a department has selected an applicant for employment, an offer of employment may be made contingent upon the prospective employee's successful completion of any required testing, training or physical examination, including drug testing. Human Resources will be responsible for coordinating all non-civil service offers of employment and starting date.

If an applicant accepts an appointment and reports to duty on the projected starting date, that applicant shall be deemed to be appointed. If the applicant fails to appear on the projected starting date, the applicant will be deemed to have declined the appointment and another applicant shall be selected, either from among the current applicants or by advertising the position again.

- 2.1.8 Employment at Will.** All employees of the City are employees at will and may be discharged at any time, with or without cause.

- 2.1.9 Evaluations.** The City has a formal performance evaluation system based on the following criteria:

- A. **Time.** Each employee will receive a performance evaluation at the conclusion of five months of employment, and annually thereafter. Should an employee not receive a performance evaluation, it is their responsibility to notify their supervisor.
- B. **Purpose.** The purpose of an evaluation is to inform the employee as to whether or not his/her performance meets the requirements of the employee's position.

1. If an employee's performance is adequate, the employee shall be so informed.
2. If an employee's performance is inadequate, and it is deemed by the department that the employee's performance can be improved to meet the requirements of the position, an improvement plan shall be developed which will include periodic reviews to determine whether the benchmarks set out in the improvement plan are being met.
3. If an employee's performance is inadequate, and it does not appear that the employee's performance can be improved to meet the requirements of the position, the employee may be discharged immediately.

C. Not a Contract of Employment. An evaluation is not a contract or a commitment to provide a salary or other form of compensation adjustment, promotion, bonus, continued employment, or retention. An evaluation is only one of several factors that the City uses in making these and other employment decisions. Any comments made on an employee's evaluation by the employee's supervisor or other City representatives, or statements made by such individuals during any discussions regarding the evaluation, or an employee's performance or future, including during any coaching or counseling session, should not be construed as a promise or guarantee since circumstances may change in the future, including the City's circumstances, and an employee's performance.

D. Employee Response. An employee may respond in writing to an evaluation, and this response shall be filed with the evaluation in the personnel file for the employee.

2.1.10 Re-Employment. An employee who has separated from employment with the City, and who is eligible for rehire, may be re-employed within one year of separation without re-qualifying for the position, upon approval of the Human Resources Manager/Civil Service Director and the City Manager. Post-offer employment screening requirements must be completed. Those reinstated within thirty (30) days of separation may be exempted from post offer pre-employment requirements. Except as provided under Civil Service Provision 143, if rehired, the employee will not be credited for vacation or sick leave accrual prior to re-employment but shall be given credit for prior full-time employment for purposes of determining the rate for subsequent accrual of leave time.

An employee who separated from employment with the City more than one year prior to his or her re-employment shall be given no credit for prior employment in the accrual of leave time, and shall meet all requirements of the position, including interviewing and testing requirements, prior to appointment.

2.1.11 Transfers and Promotions. Employees must have completed 6 months in their current position and be in good standing to be eligible for a transfer or promotion. An employee who transfers or is promoted from one position to another shall have no interruption in the accrual of his/her leave time.

An employee who transfers or is promoted from one position to another shall be considered a new hire for purpose of the evaluations set out in 2.1.9 above and shall have a new anniversary date as of the date of the employee's transfer, or promotion for performance evaluation purposes.

2.2 EQUAL EMPLOYMENT OPPORTUNITY POLICY

2.2.1 General

The City of Marshall provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, gender, national origin, ancestry, age, disability, or status as a veteran in decisions regarding employment with the City as set out in applicable laws and regulations. It is a violation of this policy for any officer or employee of the City to discriminate against individuals on the basis of race, color, religion, gender, national origin, ancestry, age, disability or status as a veteran, in accordance with applicable laws and regulations.

2.2.2 Sexual Harassment Prohibited

- A. **General.** Sexual harassment in the work place is not acceptable and will not be tolerated. Employees must avoid unwelcome behavior or conduct toward any other employee or the public which could be perceived or interpreted as sexual harassment.
- B. **Sexual Harassment Defined.** Sexual harassment consists of sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting the individual; or (3) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment in the view of the complainant.

Activities which might constitute sexual harassment include, but are not limited to: sex-oriented verbal "kidding"; "teasing" or jokes of a sexual nature; subtle pressure for sexual activity; physical contact such as patting, pinching, or brushing against another's body; written documents; pictures; or demands for sexual favors. Whether or not particular conduct rises to the level of sexual harassment, this type of behavior is unprofessional and is not permitted in the workplace.

- 2.2.3 **Other Harassment Prohibited.** Employees shall not engage in conduct which constitutes harassment of another employee on the basis of that employee's race, color, religion, gender, national origin, ancestry, age, disability, or status as a veteran, in accordance with applicable laws and regulations. Activities which might constitute harassment include, but are not limited to, kidding, teasing, jokes, cartoons and derogatory remarks relating to a person's race, color, religion, gender, national origin, ancestry, age, disability, or status as a veteran (whether or not the person is actually of that race, color, religion, gender, national origin, ancestry, age, disability or status as a veteran or is merely reasonably perceived to be such conduct) or as in the view of the complainant.

2.2.4 Complaint Procedure

- A. An applicant for employment who experiences discrimination, sexual harassment, or other harassment should file a report with the Human Resources Manager/Civil Service Director.
- B. An employee who experiences discrimination, sexual harassment, or other harassment may file a report with his or her department director or Human Resources Manager/Civil Service

Director at the employee's option. This report should be made as soon as practicable. If the supervisor is the harasser, the employee should report the behavior to the Human Resources Manager/Civil Service Director. Employees and applicants are encouraged to submit their report in writing. In circumstances where a report is not submitted in writing, the person receiving the report will put it to writing and have it signed by the person making the report. Every report of harassment or discrimination will be investigated. Information regarding an investigation will be released to others only on a need-to-know basis.

- C. Any City employee who receives a report of discrimination or harassment shall report the complaint to the Human Resources Manager/Civil Service Director. The Human Resources Manager/Civil Service Director shall ensure that a timely and adequate investigation of the complaint occurs and that the complainant is notified when the investigation of the complaint is concluded.
- D. All employees are expected to cooperate during any investigation and keep such information confidential. Failure to cooperate or keep confidentiality is cause for disciplinary action up to and including separation.

2.3 Disabilities

2.3.1 General. The City will provide a reasonable accommodation for qualified persons with a disability and who are employees or applicants for employment, in compliance with the Americans with Disabilities Act of 1990 (ADA), its amendments, and all applicable federal, state, and local laws. Reasonable accommodations will be provided for the application process, for applicants, and in the workplace, for employees.

2.3.2 Procedure

- A. Applicants.** An applicant with a disability who needs an accommodation in the examination or interview process can request this accommodation from the Human Resources Manager/Civil Service Director. In order to allow the City sufficient time to arrange for the accommodation, the request must be made no later than forty-eight (48) hours (two business days) in advance of the test or interview.

If the applicant believes that a reasonable request for an accommodation has not been satisfactorily addressed, he or she shall notify Human Resources.

1. If an employee becomes disabled as defined by the American with Disabilities Act (ADA) but may be able to continue his or her current employment with the City with reasonable accommodation, the employee can notify his or her supervisor of the disability by requesting such accommodation in writing, and attaching medical documentation of the disability and the need for accommodation. The supervisor must forward the request to the department director immediately.
2. The request for accommodation must be reviewed by the supervisor, the department director and the Human Resources Manager/Civil Service Director or his or her designee. Discussions with the employee regarding the accommodation requested are encouraged. The Human Resources Manager/Civil Service Director will provide the employee with a response to the employee's request either by approving the suggested accommodation, proposing possible alternative accommodations, or by notifying the

employee that the City will be taking additional time to examine the request. Every attempt will be made to resolve the request as quickly as possible.

3. If the City is unable to make the accommodation requested, and if no other reasonable accommodation can be found, the City will notify the employee of this decision in writing. This notification will also inform the employee of any other open positions with the City for which the employee may qualify and the duties of which the employee would need to be able to perform, with or without an accommodation.
4. If the employee is unable to perform the essential functions of his or her position, or of any other open position for which the employee may otherwise be qualified, he or she will be discharged.

3 - WORK SCHEDULE

3.1 HOURS OF WORK

3.1.1 Work Period. The work period for City employees shall be as follows:

- A. **Fire Department Employees on a 24-hour Shift.** Fire department employees who work a 24-hour shift shall have a 28-day work cycle. The workday of 24-hour employees is considered 12 hours for leave accrual.
- B. **Police Employees.** Sworn police employees have agreed to an alternate work schedule including a 14-day work period.
- C. **All other City Employees.** All other City employees who are compensated on a salary rather than hourly basis are paid their salary for all hours worked during the work week regardless of the actual number of hours worked. Any deductions for absences and tardiness will be made in accordance with state and federal law. The seven (7) day work week shall commence at 12:00 a.m. Saturday and end the following Friday at 11:59 p.m. Fire Department employees on a 24-hour shift shall begin the work week at 5:00 p.m. Friday and end the following Friday at 5:00 p.m.

3.1.2 Scheduling Hours of Work. Hours of work for department employees are scheduled by the department director with the approval of the City Manager. The City Manager may at any time, upon appropriate notice and for the interest of the City and the protection of the public welfare, alter the hours or work for City employees.

3.2 HOLIDAYS

3.2.1 Paid Holidays. The following twelve (12) days are holidays for which all regular employees, except police and fire personnel, and employees who work 12-hour shifts, receive pay at their regular rate:

New Year's Day	- January 1
Birthday of Martin Luther King, Jr.	- 3 rd Monday in January
Good Friday	- Friday before Easter Sunday
Memorial Day	- Last Monday in May
Emancipation Day	- June 19 th
Independence Day	- July 4 th
Labor Day*	- 1 st Monday in September
<i>(*also designated as September 11 Day for Firefighters in accordance with LGC 142.0013(c))</i>	
Veterans Day	- November 11 th
Thanksgiving Day	- Last Thursday in November

Friday after Thanksgiving Day	- Last Friday in November
Christmas Day	- December 25
Floating Christmas Holiday	- Day determined each year.

An employee who is absent without leave, or without making advance arrangements on the work day immediately preceding or following a holiday, shall lose pay for the holiday, as well as for the other day or days off.

In lieu of holiday time off, police officers and fire department personnel, and other employees on shift schedules shall accrue the holiday should they be scheduled to work the holiday. Police officers and shift personnel (other than Fire Department personnel) shall receive 128 hours annually; fire department personnel on shift schedules shall receive 144 hours annually.

3.2.2 Holidays Occurring on a Saturday or Sunday. When an authorized holiday falls on a Sunday, the following Monday will be observed as the holiday; when the holiday falls on a Saturday, the preceding Friday will be observed as the holiday.

3.2.3 Work on a Holiday. In a department in which employees regularly work on holidays, the employee will accrue the holiday for use later.

3.2.4 Holiday during other Leave Time. An authorized holiday that falls within an employee's vacation or sick leave shall not be deducted from the accrued vacation or sick leave.

3.3 ATTENDANCE

3.3.1 General. Regular attendance at work and working all required hours are conditions of employment. Proper notification of the reason for absence or tardiness requires the employee to request authorization from the supervisor as far in advance as possible. Vacation leave must be scheduled in advance with the employee's supervisor. Sick leave may be taken only for the purposes set out in the sick leave policy. Absenteeism or tardiness that is unexcused or excessive in the judgment of the City and misuse of sick leave are grounds for disciplinary action, up to and including dismissal.

3.3.2 Reporting. It is the responsibility of each employee to call the employee's department and report that they will not be coming to work. Generally, the employee must make personal contact with her/his immediate supervisor at least 30 minutes before the scheduled report time for work. (Refer to specific departmental guidelines on reporting absences.) If their immediate supervisor is not available, he or she must speak with another manager. If no manager is available, it is the responsibility of the employee to provide a number and/or the location where the employee may be contacted. It is ultimately the responsibility of the employee to contact the employee's supervisor. Failure to notify the supervisor could result in immediate separation.

In situations where the employee knows in advance of a pending absence, early notification, as soon as possible or no later than forty-eight (48) hours is desirable to allow for adequate scheduling of personnel. Employees shall make every effort to contact a supervisor before contacting other departmental personnel as an alternative source.

Individual departments may have a more restrictive reporting policy.

3.3.3 Excessive Absences. An excessive absence is any pattern of absenteeism or tardiness which appears to be unjustified or which interferes with the ability of the employee's department to accomplish the work of the department. Employees who are considered as having a record of excessive absenteeism are subject to corrective action up to and including discharge upon the occurrence of one unexcused absence. The City may have cause to believe that absences are unexcused when:

- a. absences are not scheduled (vacation leave) or reported (sick leave) in the manner required by City policy or departmental guidelines;
- b. absences exceed the employee's accrued sick and/or vacation leave; or
- c. the employee has a pattern of being absent on either end of a scheduled leave time or otherwise; or on days when undesirable tasks have been scheduled.

It is recognized that legitimate circumstances may arise which result in acceptable long-term absences. The City will adhere to all Federal and State guidelines which apply to such circumstances.

3.3.4 Control and Correction. Supervisors are directly responsible for maintaining good attendance in their respective departments. This responsibility may include maintaining attendance records, counseling employees who are experiencing difficulties in attendance and, when necessary, recommending corrective action or discharge. Nothing stated herein alters, or should be construed as altering, the employment at-will status of any City employee.

3.3.5 Abandonment of Position. An employee who fails to report to work for three consecutive regularly scheduled work days without being on approved leave will be considered to have abandoned his or her position, and said abandonment will be treated as a voluntary resignation by the employee.

3.4 WEATHER RELATED WORK ABSENCES

Per the discretion of the City Manager.

4- COMPENSATION

4.1 COMPENSATION and CLASSIFICATION PLAN

- 4.1.1 General.** The City has a Compensation and Classification Plan, set out in a separate document, which lists each position within the City by grade. The Compensation and Classification Plan establishes the salary range for each grade, and sets out guidelines for its administration.
- 4.1.1 Administration.** Administration of the Compensation and Classification Plan is the responsibility of the Human Resources Manager/Civil Service Director as directed by the City Manager. It is the policy of the City to:
1. Administer the pay plan in such a manner as to attract, motivate and retain the most highly qualified individuals possible.
 2. Evaluate positions in a consistent manner and place them in an appropriate pay structure which is competitive in the marketplace.
 3. Hire, promote, assign and reassign employees of the highest qualifications to vacant positions within the organization without regard to race, color, religion, gender, national origin, ancestry, age, disability, or status as a veteran.

4.2 POSITIONS

- 4.2.1 Positions Authorized.** Positions with the City are defined by job descriptions which are on file with Human Resources. Positions which have been established may be filled in accordance with the City's annual budget. Each position is assigned to a salary grade within the City's Compensation and Classification Plan, based upon the requirements, responsibilities, etc. of the position.
- 4.2.2 Creation or Amendment of New Positions.** Should a new position be created, or should changes in the requirements of a position be so substantial as to warrant a change in grade, the City will reevaluate the position. All classifications of new positions and changes in existing position classifications must be approved by the City Manager.

4.3 PAYROLL

- 4.3.1 Duties of each Department.** At the conclusion of each pay period, each department shall submit time-worked reports, in accordance with procedures established by the Finance Department, sufficient for the City to calculate the amounts owed to employees for their service to the City for that pay period. Such information shall include, as a minimum: hours actually worked by each employee, leave time taken and overtime/compensatory time earned and taken, and shall be approved by the department director.
- 4.3.2 Duties of the Human Resources staff.** The Human Resources Manager/Civil Service Director will review all personnel action forms changing the pay, classification, or status and, will forward approved information to the Finance Department for final processing and City Manager approval.
- 4.3.3 Changes in Employee Information**
- A. Pay, Classification and Status Changes.** Each department shall notify the Human Resources Manager/Civil Service Director in a timely manner of any proposed changes in the pay, classification or status of any person employed in the department.

- B. **Employee Information.** Each employee shall notify the Human Resources Manager/Civil Service Director via their supervisor of any changes in personal status, such as address, telephone number, or changes in dependents. If the City does not have accurate information, errors could result in determination or provision of benefits.

4.4 PAY CALCULATIONS

- 4.4.1 **Salary Basis.** Regular, full-time employees are paid on a bi-weekly basis. Employees who are compensated on a salary rather than hourly basis are paid their salary for all hours worked during the work week, regardless of the actual number of hours worked. Any deductions for absences and tardiness will be made in accordance with state and federal law. The base pay for bi-weekly paychecks is calculated as follows:

$$\text{Annual salary}/26 = \text{bi-weekly salary}$$

- 4.4.2 **Hourly Rate of Pay.** For many purposes, specific payroll calculations are made on an hourly basis for exempt and non-exempt employees. Those situations include:

1. Fire department employees on a 24-hour shift
2. Part-time, temporary and seasonal employees
3. New hires and separating employees who work less than a total pay period
4. Employees who take leave without pay
5. Pay increases when an employee's promotion occurs in the middle of a pay period
6. Disciplinary suspensions

The hourly rate for regular full-time employees (except Fire Department employees on a 24-hour shift) is determined as follows:

$$\text{Annual Salary}/2080 = \text{Hourly rate}$$

4.5 PAY PERIOD AND PAY DAY

A pay period is that period of time for which a paycheck is issued. City employees shall be paid bi-weekly with normal paydays occurring every other Friday. Exceptions to paydays may occur due to City observed holidays and City office closures.

4.6 PAY CHECKS

- 4.6.1 **Direct Deposit.** All employees will be required to participate in mandatory direct deposit. This election may be modified at any time by completing the appropriate form available in the Human Resources office.
- 4.6.2 **Deductions; Leave Time Statement.** All required deductions such as for federal, state, and local taxes and all authorized voluntary deductions such as for health insurance contributions will be withheld automatically from employee paychecks. In addition, pay stubs will reflect accumulated leave time. Employees should review their pay stubs for errors and immediately report any errors to their supervisor.
- 4.6.3 **Involuntary Payroll Deductions**

- A. **Court and Administrative Orders for Debt other than Child Support.** If someone has obtained a court order against an employee for money the employee owes them, the court can

order the City to withhold money from the employee's paycheck. In addition, some state and federal agencies have the authority to issue administrative orders to withhold money from an employee's paycheck.

If the City receives a court or administrative order to deduct money from an employee's paycheck for a debt other than child support, the City will begin withholding the amount ordered upon receipt of the court order.

- B. **Child Support.** If a court has ordered an employee to pay child support, the City will begin withholding the amount of child support ordered by the court upon receipt of the court order. It is extremely important that employees remain current in any court-ordered child support. If an employee becomes delinquent in child support payments, the court may be able to require the City to withhold up to 65% of the employee's paycheck to pay past-due child support. The City of Marshall charges a \$5 processing fee for all child support payments.

- 4.6.4 **Discrepancies.** Employees should report any discrepancies in their paycheck or pay stub (overpayments, underpayments, incorrect leave time usage or accumulation) to their supervisor. Failure to report an overpayment in payroll or in an expense reimbursement may result in disciplinary action up to and including separation.

Should the supervisor be unable to resolve the issue, the supervisor should notify the department director, who will notify the Human Resources Manager/Civil Service Director. Discrepancies in a pay check or pay stub should be brought to the City's attention, specifically the Human Resources Manager/Civil Service Director, immediately. The City will promptly investigate any such matter brought to its attention to determine whether there has been a violation of this Policy. It is the obligation of all employees to cooperate in such an investigation. Any improper or mistaken salary deduction will be remedied promptly.

In the event that an investigation establishes that a violation of this Policy has occurred, the City will reimburse the employee for any improper deductions and will take all appropriate corrective action to ensure that such deductions or conduct does not occur again.

4.7 OVERTIME

- 4.7.1 **General.** Subject to the exceptions set out below, the City pays overtime at time and one half for all hours an employee actually works in excess of forty (40) hours per week. Holiday pay is considered time worked. All overtime must be approved in advance by the employee's supervisor.

- 4.7.2 **Exempt Employees.** Employees who qualify in accordance with the Fair Labor Standards Act (FLSA) as bona fide executive, administrative, or professional employees are exempt from overtime requirements. Exempt employees are exempted from overtime pay or compensatory time for hours worked over forty in a work week.

4.7.3 Police Department Civil Service Employees

- A. **Overtime.** Police department Civil Service employees shall be paid overtime for actual hours worked in excess of eighty (80) hours in any fourteen (14) day work period in accordance with 4.7.1 above.

- B. **Emergency Call Back.** See 4.8

4.7.4 Fire Department Civil Service Employees on a 24-hour Shift

- A. **Regular Overtime.** The Fair Labor Standards Act (FLSA) sets out a schedule of hours which a firefighter may work without the payment of overtime, depending on the length of the work period. Firefighters with the City are on a 28-day work period and are regularly scheduled to work 96, 120, or 144 hours during each pay period. Firefighters' overtime pay is calculated in compliance with FLSA provisions and in accordance with 4.7.1 above.
- B. **Call-backs.** See 4.8

4.7.5 Exceptions to the Payment of Overtime

- A. **Flexible Shift Arrangements.** Non-exempt employees working a 40-hour work week may be scheduled to arrive early, stay over, or otherwise perform work for the City outside their regular shift by their supervisor. Employees scheduled to perform work outside their regular shift may be scheduled to take time off in an equal amount during that work period. For instance, if an employee works two hours past his or her regular shift on Monday, then that employee may be required to take two (2) hours off prior to the end of the work period which includes that Monday. An employee's supervisor must schedule and approve a change in work hours.

All hours worked must be reported and "off the clock" work is strictly prohibited. If, for any reason, employees work beyond their regular work schedule and do not take an equal amount of time off during the work period, they must report the additional hours worked and will receive overtime pay or compensatory time for all hours worked above forty (40) during the work period. However, in such circumstances, employees may be subject to discipline, up to and including discharge for repeat offenders, for incurring overtime which has not been authorized in advance.

- B. **Department Training.** Departments may schedule training outside an employee's regular shift, and schedule equal time off during the work period for employees attending the training. Attendance at a training session outside of an employee's regular shift will not be paid at the time-and-one-half rate. However, all hours physically worked, including time in training classes, greater than forty (40) in work period are paid at time and one half.

4.8 CALL-BACK/ON-CALL

- 4.8.1 **After-Hours or Emergency Call-Back.** Non-exempt employees who are called outside his or her regular shift to return back to the workplace are paid at a rate of one and one half times the employee's regular pay rate, regardless of the number of hours actually worked in the work period. A minimum of two (2) hours will be paid for call-backs. However, if an employee is subsequently called back within the initial two (2) hour call, he/she will not receive additional compensation until the expiration of the initial two (2) hours. (Example: An employee's regular shift ends at 5:00 p.m. and he/she called back at 7:30 p.m. to respond to a call that lasts until 8:00 p.m. The employee then receives another call out at 8:30 p.m. that lasts until 10:00 p.m. The total compensation for these call outs will be two and one-half (2½) hours at a rate of one and one half times the employee's regular pay rate.) An extension of the regular work schedule is not considered as called back to the workplace.
- 4.8.2 **On-Call.** On-call time is not considered time worked and is not compensable. However, on-call assignments are eligible for emergency call-back pay in accordance with 4.8.1. During on-call time, the employee is free to pursue personal activities but must respond to summons (pager,

telephone, or radio) within designated guidelines determined by the department director.

4.8.3 Travel Time. Travel to and from work is not compensable.

Travel time for work-related activities during regular work hours is compensable for non-exempt employees. Travel time which is outside of regular working hours is not compensable unless the employee is performing work.

4.8.4 Meal/Break Periods. Every effort will be made to ensure that all employees receive a daily meal/break during the day. However, meal or break periods are not required. At the discretion of the supervisor, a thirty (30)-minute to one (1)-hour allowance for meal breaks is customarily granted to full-time employees. This meal period is not considered work time if employees are completely relieved of their work duties. Employees are encouraged to take meal breaks away from the work station.

If employees must continue their work duties through the meal or break period, this work time must be supervisor-approved and recorded as work time.

4.9 COMPENSATORY TIME

4.9.1 Voluntary. Non-exempt employees will generally accrue compensatory time for hours worked in excess of forty (40) hours in a work week. However, depending on budgetary constraints, overtime pay may be offered. All overtime shall be approved by the department director or their designee prior to the work being performed.

4.9.2 Accrual. Compensatory time accrues at the rate of one and one half times the hours worked. Employees may accumulate compensatory time up to the following limits unless a lower maximum is set by department guidelines based on operational demands: Maximum accrual is 80 hours. (Police and Fire personnel may accrue a maximum of 320 hours of time worked; which equates to 480 hours compensatory time off.)

An employee will be paid overtime once he or she has reached the maximum accumulation of compensatory time and may be directed to use accrued compensatory time.

4.9.3 Exempt Employees. Exempt employees are not eligible to accrue compensatory time or receive overtime pay. An exempt employee who is absent shall have that time deducted from the appropriate accrued leave. If all available leave is exhausted, the time will be counted as non-paid.

Due to the obligations for exempt employees to attend after-hour meetings and work on projects outside of regular work hours, department Directors have the discretion to allow an exempt employee to be absent for a partial day in the work week without deducting any time from the appropriate leave time. Unauthorized absences during a shift shall be addressed as a performance issue.

4.10 OUT OF POSITION PAY

Out of position pay may be paid to an employee who is approved by the City Manager to perform work in a higher classification for an extended period of time. This temporary appointment must be documented by a Personnel Action Form and forwarded to Human Resources. The rate of pay for the out of position work shall be at least five percent greater than the employee's regular rate of pay. Out of class pay for public safety employees shall be appointed and paid in accordance with the Texas Local Government Code

4.11 QUESTIONS OR CONCERNS REGARDING COMPENSATION

The Human Resources Manager/Civil Service Director shall assist employees and management with questions or concerns regarding compensation

5 - Leave Time

5.1 SCHEDULING AND REPORTING LEAVE TIME

All use of leave time must be approved by the department director, in conformance with the rules set out in these policies for each type of leave. **Use of leave time must be reported concurrently with the reporting of hours worked for payroll purposes.** The Finance Department will maintain permanent records of each employee's use of leave time.

5.2 VACATION LEAVE

5.2.1 Accrual

A. Regular Full-time Employees. Regular full-time employees, except those fire and police department employees discussed below, accrue annual vacation leave with pay from the date of employment at the following rates:

Years of Service	Vacation/Year	Per Pay Period
Years 1-4	10 8-hour days per year	3.08 hours
Years 5-9	12 8-hour days per year	3.69 hours
After 10 years of service.	15 8-hour days per year	4.615 hours

B. Fire Department Personnel on a 24-hour Shift Schedule. Fire department personnel on a 24-hour shift schedule accrue vacation leave as follows:

Years of Service	Vacation/Year	Per Pay Period
	15 12-hour days per year	
1 + years of service	180 hours	6.92 hours

C. Police Department Personnel. Police department personnel working other than a forty (40) hour, Monday-through-Friday schedule accrue vacation leave as follows:

Years of Service	Vacation/Year	Per Pay Period
		4.615 hours
1 + years of service	15 8-hour days	

5.2.2 Newly-Hired Employees

- A. **Accrual.** Newly-hired employees will begin accruing vacation leave with their first full pay period.
- B. **Use of Vacation Leave.** An employee may use vacation upon accrual, with the approval of the department director, after completing six (6) months of employment.

5.2.3 Limit on Accumulation of Vacation Leave. Police & non civil service employees - In no case will more than 240 hours vacation be carried over to the next year, unless waived in writing by the City Manager due to the existence of special circumstances. Fire - In no case will more than 360 hours vacation be carried over to the next year, unless waived in writing by the City Manager due to extending circumstances.

5.2.4 Scheduling of Vacation Leave

- a. Vacation leave may be taken at such times as to meet the operating requirements of the City and in so far as possible, the preference of the employee.
- b. A supervisor may grant vacation leave at a time during the year that will best serve public interest. Priority may be given to an employee based upon departmental guidelines.

5.2.5 Payment Upon Separation From Employment. Upon separation, accrued, earned vacation hours are payable at the employee's hourly rate at the time of separation, up to a maximum of 240 hours.

Deceased employees' remaining accrued vacation leave (up to 240 hours) will be paid to his/her estate.

5.3 SICK LEAVE

5.3.1 Purpose of Sick Leave. Allowances for sick leave with pay shall be granted to all regular full-time employees in case of personal injury or sickness; and for necessary medical, dental and optical examinations or treatments of the employee or a member of the employee's immediate family (spouse, child or parent, or the child or parent of a spouse). Sick leave may also be used for bereavement leave, as defined in section 5.8.4. In addition, sick leave may be used in accordance with the Family and Medical Leave Policy, as defined in section 5.5. *Sick leave is meant to be a protection in case of need, and not a benefit to be used whenever wanted.* All allowances of such leave shall be in conformance with this stated purpose.

5.3.2 Accrual of Sick Leave. Every regular, full-time employee accrues sick leave. For persons hired after the adoption of this policy, all accrued sick leave is forfeited when employment is terminated except as provided for in state and local government law, and except in the case of retirees. Yearly sick leave accruals are as follows:

- a. All employees, except Civil Service employees of the fire department working a 24-hour shift, will accrue sick leave at a rate of 4.615 hours per pay period (120 hours per year).
- b. Employees of the fire department on 24-hour shift will accrue sick leave at a rate of 6.92 hours per pay period (180 hours per year).

5.3.3 Maximum Accrual. Sick leave may be accumulated in accordance with the following:

- a. All regular employees except Civil Service classified personnel may accrue a maximum of 720 hours.
- b. Civil Service personnel may accumulate sick leave without limit.

5.3.4 Holidays. If an official holiday occurs during a period of illness, an employee will be charged for the holiday instead of sick leave.

5.3.5 Vacation. If an employee becomes ill while taking vacation leave, the period of illness may be charged as sick leave, and the charge against vacation leave will be reduced accordingly. A written request for this substitution must be made within three (3) days after the employee has returned to work and must be supported by a medical statement from a health care professional.

5.3.6 Restrictions on Use

- A. **Minimum Use.** Accrued sick leave absences may be taken in no smaller than fifteen (15) minute increments.
- B. **Physician's Certification.** A physician's certificate is a report from a licensed health care professional that verifies that an employee has been seen by the physician. This certificate should also state whether the employee is or is not able to perform their duties, as well as an estimate of the duration of the illness.
 1. A physician's certificate may be required if an employee is off-duty due to illness or injury for more than three (3) days. The original of this report is submitted to the supervisor and forwarded to Human Resources.
 2. The supervisor may require a doctor's certificate for any employee whose sick leave usage indicates a chronic illness or excessive usage pattern.

5.3.7 Doctor's Release. A doctor's release authorizing the employee to return to work is required:

1. When an employee is off work for an illness or non-work related injury for three (3) days or longer
2. When an employee has been hospitalized with a major medical occurrence
3. At the request of the department director or Human Resources Manager/ Civil Service Director to ascertain the employee's ability to perform his or her duties

5.3.8 Sick Leave Review. All sick leave usage will be reviewed. Employees having sick leave indicating an excessive usage pattern will have their record scrutinized, and may be scheduled for an interview to discuss their sick leave usage. (Note: An "incident" of sick leave is any consecutive loss of time, either one-day or multiple days.) If it is determined that there has been a negative review, this will generate counseling and/or disciplinary action as appropriate and may require the employee to submit a doctor's certificate for every absence until this pattern is corrected.

If an employee has a recurring health problem, every effort will be made to assist that employee in recovering from the illness. Follow-up in these cases will be tailored to the needs of the individual situation.

Items than can result in a negative sick leave review may include but are not limited to:

1. Patterns of absenteeism.
2. Evidence of outside occupation during a sick leave period.
3. Recent denial of vacation or holiday leave or a substitution request that coincides with the sick leave period.
4. Evidence that indicates an abuse of sick leave.

5.3.9 Summary. It is the intent of this policy to provide for the health and well being of all employees, while assuring compliance with reasonable standards of work attendance, state and federal laws. Sick leave is not a free day off – it is a form of insurance against income loss for ill or injured employees or other members of the family as defined in the policy. Inappropriate use of sick leave will be subject to disciplinary action.

5.3.10 Payment Upon Separation From Employment. Employees hired after the adoption of this policy (1/1/2022) will not receive payment for accrued sick leave upon separation from employment, except in the case of retirement. Persons eligible to retire in accordance with TMRS guidelines and with twenty (20) years continuous service shall receive payment for one-half (1/2) of accrued sick leave (maximum accrual- 720 hours; maximum payment-360 hours). Civil Service employees shall be paid for accrued leave as provided for in state and local government codes. Employee is not in their initial employment probation period, during which period sick leave does not vest.

- a. Employee must deliver a written notice to his/her Department Head no less than ten (10) working days prior to his intended separation of employment.
- b. Those employees hired prior to January 1, 2022 are still eligible for payment of one-half (1/2) the accrual of their unused sick leave if they complied with all of the following requirements prior to their separation of employment with the City of Marshall that is stated above.

5.4 LEAVE TIME DEFICITS

5.4.1 General. It is the standard practice of the City of Marshall that City employees not be allowed to accrue leave time deficits. Departments may not allow an employee to have a leave deficit by any informal practice, such as failing to report leave time when actually taken. The City recognizes, however, that special circumstances may arise in which allowance of a temporary leave time deficit may be reasonable.

5.4.2 City Manager Approval. When an employee is requesting leave time for which the employee has not accumulated sufficient leave, the Department Director shall notify the City Manager. If the City Manager finds that special circumstances exist which make the granting of the deficit leave time reasonable, the City Manager may allow the employee to run a temporary leave time deficit. Special circumstances which the City Manager may consider include, but are not limited to, personal or family emergency and special needs of the City.

5.4.3 Factors. In deciding whether to allow the deficit, the City Manager may consider the length of the employee's employment with the City, the employee's pattern of leave time usage, and the length of time which will be required for the employee to accumulate sufficient leave time to cover the deficit.

5.5 FAMILY MEDICAL LEAVE

5.5.1 Eligibility. Any employee who has twelve (12) months of continuous service and has worked at least 1,250 hours in the last twelve (12) months is eligible for leave under the federal Family and Medical Leave Act (FMLA). Requests for Family and Medical Leave shall be on forms provided by the City, shall state the purpose for which Family and Medical Leave is being requested, and shall indicate the requested timing for the Family and Medical Leave.

5.5.2 Leave Time Available. An employee may request up to twelve (12) weeks of Family and Medical Leave during a twelve 12-month period (or up to 26 weeks of leave to care for an injured or ill service member), measured from a previous rolling twelve-month period. Under this method, an employee may determine the amount of Family and Medical leave to which he or she is entitled to at any given time simply by reviewing his or her use of leave during the immediate past twelve (12) months. The amount of leave taken during this period is deducted from twelve (12) weeks to determine the amount of additional leave time to which the employee is entitled.

5.5.3 Payment for Leave Time Taken. An employee on Family and Medical Leave must use all accrued sick, vacation, and compensatory leave time as part of Family and Medical Leave time. After all accrued leave time has been exhausted, the remainder of all Family and Medical Leave taken will be leave without pay.

5.5.4 Use of Family and Medical Leave Time

5.5.4.1 Purposes. Under the Family and Medical Leave Act (FMLA), leave may be taken for one or more of the following:

1. for the birth and care of the newborn child of the employee;
 - Entitlement to a leave for the birth or adoption (including foster care placement) of a child shall expire twelve (12) months after the date of such birth or placement.
2. for placement with the employee of a son or daughter for adoption or foster care;
 - Entitlement to a leave for the birth or adoption (including foster care placement) of a child shall expire twelve (12) months after the date of such birth or placement.
3. to care for an immediate family member (spouse, child or parent) with a serious health condition;
4. to take medical leave when the employee is unable to work because of a serious health condition, whether occupational or non-occupational;
5. a covered family member's active duty or call to active duty in the Armed Forces;
 - An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. Reasons related to the call-up or service include helping the family member prepare for the departure or caring for children of the service member. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.
 - Employees requesting this type of FMLA leave must provide proof of the qualifying family member's call-up or active military service before leave is granted.
6. To care for an injured or ill service member.
 - This leave may extend to up to 26 weeks in a 12-month period for an employee whose spouse, son, daughter, parent or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the service member's office, grade, rank or rating. Next-of-kin is defined as the closest blood relative of the injured or recovering service member. An employee is also eligible for this type of leave when the family service member is receiving medical treatment, recuperation or therapy, even if the service member is on temporary disability retired list.

- Employees requesting this type of FMLA leave must provide certification of the family member or next-of-kin's injury, recovery or need for care. This certification is not tied to a serious health condition as for other types of FMLA leave. This is the only type of FMLA leave that may extend an employee's leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA leave are included with this type of leave totaling the 26 weeks.

5.5.5 Definitions

Twelve (12) Month Period – Calendar year January 1 – December 31

Spouse - The husband or wife of the employee (defined in accordance with applicable state law). If both spouses are employed by the City and are eligible for family/medical leave their collective leave shall be limited to a total of twelve (12) workweeks of leave in a twelve (12) month period for the birth, adoption (including foster care placement) of a child, or to care for a parent with a serious health condition.

Child - A son or daughter either under eighteen (18) years of age, or eighteen (18) years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or stepchild.

For purposes relating to an injured or ill service member, the child does not have to be a minor.

Parent - The biological parent of an employee, an individual who stood in place of the parent to that employee, but *not* a parent "in-law".

Serious Health Condition - An illness, injury, impairment, or a physical or mental condition that involves:

- 1) Any period of incapacity for treatment in connection with or consequent to in-patient care in a hospital, hospice, or a residential medical care facility; or
- 2) Any period of incapacity requiring absence from work, school, or other daily activities, for more than three consecutive calendar days, AND that involves continuing treatment by a health care provider; or
- 3) 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
- 4) Prenatal care by a health care provider.

Health Care Provider - A doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner or nurse midwife, and Christian Science practitioner.

Continuing Medical Treatment - Includes:

- 1) Two (2) or more visits to a health care provider; or
- 2) Two (2) or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider; or
- 3) A single visit to a health care provider that results in a regimen of continuing treatment; or

- 4) 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.

Family/Medical Leave - Qualified leave permitted by Family and Medical Leave Act, 1993 (FMLA).

5.5.6 Scheduling Family and Medical Leave

1. The City shall make every reasonable effort to accommodate the leave schedule requested by the employee. However, when practical, the employee must make a reasonable effort to schedule leave time so as not to unduly disrupt the operations of the City.
2. When the circumstances of the need for the leave are reasonably foreseeable, the employee shall provide the City with at least 30 days notice before the date the leave is to begin. When it is not possible to give 30 days notice, the employee shall provide such advance notice as is practicable.
3. When leave is requested to care for an immediate family member or for the employee's own serious health condition, the employee must furnish a certification issued by the health care provider of the person with the serious health condition as to that person's need for care.
4. Family and Medical Leave may be taken in the form of a reduced schedule or flexible schedule, when medically necessary. At the discretion of the City Manager, employees working reduced or flexible schedules may be transferred to an alternative position with equivalent pay and benefits.

5.5.7 Medical Certification and Reporting Requirements. A family/medical leave request based on a serious health condition shall be supported by a completed "Physician or Practitioner Certification" form (see attached WH-380) issued by the health care provider of the employee, the employee's spouse, child, or parent, as appropriate. A copy of this certification shall be submitted to the Department Head in a timely manner, but not later than fifteen (15) days after the leave is requested unless it is not practical under the circumstances to do so despite the employee's diligent, good faith efforts.

If an employee fails to submit the certification within fifteen (15) days for a foreseeable leave, the City may deny the leave request until the employee provides such certification. When a leave is not foreseeable, the employee must still attempt to provide the certification within fifteen (15) days or as soon as practicable under the circumstances. If an employee fails to provide the certification within a reasonable time, under pertinent circumstances because of the employee's lack of diligence or good faith effort, the City may deny the continuation of the leave.

The certification shall include:

- 1) The date the serious health condition commenced.
- 2) The probable duration of the condition based on the health care provider's best medical judgment.
- 3) The appropriate medical facts within the knowledge of the health care provider regarding the condition, including but not limited to the diagnosis, regiment of treatment, and whether in-patient hospitalization is required.
- 4) A statement that the employee is unable to perform his/her position functions (if applicable).
- 5) A statement that the employee is needed to care for a seriously-ill family member, or that the employee's presence would be beneficial or desirable for the care of the family member, and an estimate of the amount of time that the employee is needed to provide the care.

The City may require (at its own expense), that the employee/family member obtain a second opinion. The City is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider can not be employed on a regular basis by the City. If the second opinion conflicts with the original opinion, the City may require (at its own expense), that the employee/family member obtain the opinion of a third health care provider designated and approved jointly, by the City and the employee. This third opinion will be final and binding on both parties. The City may require that the employee/family member obtain subsequent recertification's on a reasonable basis.

Documentation of the Covered Family Member's Active Duty or Call to Active Duty in the Armed Forces. Employees requesting this type of service member FMLA leave must provide proof of the qualifying family member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

Documentation of the Need for Service member FMLA Leave to Care for an Injured or Ill Service member. Employees requesting this type of Service member FMLA leave must provide documentation of the family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the service member's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.

- 5.5.8 Return to Work.** An employee who takes Family and Medical Leave is entitled, on return from such leave, to be restored to the position of employment held by the employee when the leave commenced, unless the needs of the City have necessitated the permanent filling of the position. In such case the employee is entitled to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. An employee does not have a right to be restored to employment if the position which the employee occupied prior to taking Family and Medical Leave is appropriately or legally eliminated or the employee would have been subject to layoff had Family and Medical Leave not been taken.

Employees on a leave shall notify their supervisor periodically of his/her leave status and intention to return to work. The supervisor has the authority to determine how often the employee shall provide this notification. A fitness-for-duty release to return to work shall be required if the leave was based on a serious health condition of the employee. The City may deny job restoration until the employee provides such certification.

- 5.5.9 Benefits and Accrual of Leave Time.** Other than vacation and sick leave taken as part of Family and Medical Leave, the taking of Family and Medical Leave will not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Employment benefits, such as sick leave and vacation leave, do not accrue during any period of Family and Medical Leave which is unpaid.
- 5.5.10 Paid or Unpaid Leave.** An employee shall be required to substitute accrued leave (in the following order) sick leave, vacation, and holiday leave for any qualified family/medical leave of a non-discretionary nature. Non-discretionary leave shall be defined as any leave resulting from an illness, injury, impairment, or other physical or mental condition that would prevent the employee from performing his/her position functions.

An employee shall be required to substitute accrued leave (in the following order) vacation, holiday, and sick leave for any qualified family/medical leave of a discretionary nature. Discretionary leave shall be defined as any leave which does not qualify as non-discretionary leave as that term is defined above.

When an employee has exhausted his/her accrued leave as outlined above, the employee may request an additional period of unpaid leave, providing the combined total of the paid and unpaid leave does not exceed twelve (12) workweeks in a twelve (12) month period.

An employee on paid or unpaid leave is not allowed to be actively employed elsewhere during hours that he/she would have been regularly scheduled to work for the city.

- 5.5.11 Medical Insurance.** While the employee is on family medical leave, the City will continue to provide the employee with health and dental insurance benefits. These benefits will be provided to the employee under the same conditions as if the employee was actively working. The employee must continue to pay applicable premiums, co-payments, deductibles, and other out-of-pocket expenses (including premiums for dependent coverage, if any).

Any employee taking family medical leave must work with the Finance Department to determine a written schedule for paying insurance benefit premiums. This schedule shall, when feasible, take place prior to the employee taking family medical leave.

A 30-day grace period for payment of employee premiums will be provided before coverage is affected.

An employee who is on unpaid family medical leave and chooses not to pay or agrees but fails to pay insurance premiums shall have insurance coverage cancelled for non-payment of insurance premium. An employee whose insurance benefits are cancelled (due to non-payment of premium) shall, upon returning to work (full-time), have insurance benefits restored as if there was no break in coverage. Insurance benefits for the employee will be restored without the employee having to meet any qualifications, take a physical examination, or satisfy pre-existing conditions.

5.6 WORK-RELATED INJURY

Work related injuries and illnesses will run concurrent with Family and Medical Leave.

5.7 MILITARY LEAVE

- 5.7.1 Leave With Pay.** All employees who are members of the military services, active services, reserve units, National Guard, or other special units are entitled to a leave of absence from their respective duties without loss of vacation time, seniority, or salary on all days during which they are engaged in authorized training or duty ordered, up to fifteen (15) work days per calendar year (not necessarily consecutive).

Time required over and above the maximum allowed military leave must be taken as vacation leave or leave of absence without pay

The provisions of this section apply to all City employees regardless of length of service and whether they are in regular or temporary positions. In the case of temporary and regular part-time employees where the work schedule is variable, the employee will be paid on the basis of the average daily time worked. All requests for leave must be accompanied by a copy of the order, directive, notice, or other document requiring absence from scheduled work.

- 5.7.2 Leave Without Pay.** This is a form of leave distinct from paid military leave which applies to all regular full-time employees who either volunteer or are inducted directly into any branch of the U.S. Armed Forces. Leaves under this provision continue for the duration of the employee's initial term of enlistment, not to exceed six (6) years. To be considered for re-employment following service in the Armed Forces, an employee must receive an honorable discharge and must apply for re-employment without any intervening employment. The veteran has ninety (90) days from discharge in which to claim the position previously held. He/she will then be restored to the same or equivalent position as that held at the time of enlistment or induction.

Reinstatement of Civil Service employees who have taken a military leave of absence shall be in accordance with Local Government Code, Chapter 143.

- 5.7.3 Discrimination Prohibited.** No employee shall be discharged from employment for being a member of the National Guard or a branch of the armed forces of the United States, nor shall any employee be hindered or prevented from performance of any military service which the employee is called upon to perform by proper authority nor otherwise be discriminated against or dissuaded from enlisting or continuing his or her service in the military by threat or injury to the employee in respect to his or her employment

5.8 MISCELLANEOUS LEAVE TIME

- 5.8.1 Jury Duty.** An employee will be granted leave with pay when required to be absent from work for jury duty. An employee required to serve on jury duty shall notify his or her department director as soon as practicable of the requirement to serve, and the projected length of time the employee's attendance will be required.
- 5.8.2 Appearance as a Witness.** An employee will be granted leave with pay when required to be absent from work to appear as a witness in a court proceeding to testify on behalf of the City or to appear as a City employee to testify as to a matter related to his or her employment with the City in a case in which the City is not a party. When the employee is required to appear as a witness or party in

any other court proceeding, the employee may use accumulated vacation time or compensatory time for court appearances. Under court order an employee may appear without pay. The employee shall provide his or her department director with a copy of the subpoena or other record requiring the employee's appearance in court.

5.8.3 Voting. City employees will be allowed three consecutive hours off in order to vote, subject to the following restrictions:

1. The time available from the time polls open until the beginning of the employee's shift, or from the time the employee's shift ends until the time the polls close will be considered as part of the time the employee has available to vote.
2. Employees must use the time taken only for the purpose of voting.
3. Employees must be at work during all regularly scheduled hours that are not actually used to vote. Employees may not engage in other activities during time when they have been released from work to vote.
4. Scheduling of the time off for voting must be approved by the employee's supervisor.

5.8.4 Bereavement Leave

- A. **Paid Leave.** An employee may be granted emergency leave with pay for up to three (3) days per-life event, to attend the funeral or to deal with other matters relating to the death of an immediate family member. For purposes of this provision, immediate family member shall mean the employee's spouse the parents, grandparents, siblings, children, and grandchildren of the employee or the employee's spouse, and members of the employee's household, whether or not related by blood or marriage.
- B. **Use of Other Leave Time.** An employee may use accumulated leave time, including sick leave, for the purpose of attending a funeral or to deal with other matters relating to the death of an immediate family member or household member, as defined above, when bereavement leave is exhausted.
- C. **Leave Without Pay.** Upon approval of the department director and the City Manager, an additional forty (40) hours of leave without pay may be granted to employees who have exhausted bereavement leave and all other paid leave time to deal with matters relating to the death of an immediate family or household member.
- D. **Other than immediate family.** Death of a relative or other person not included in the immediate family may be considered on an individual basis as approved by City Manager or his/her designee and time off granted as the circumstances warrant.

5.9 DISCRETIONARY LEAVE OF ABSENCE WITHOUT PAY

Employees who are not eligible for family and medical leave, or who have exhausted such leave, or who seek leave for reasons other than family and medical leave, may apply for a discretionary leave of absence. Such leaves are totally within the discretion of the City and will be granted only if the City Manager believes the employee's time away from the job would be in the best interests of both the employee and the City. If such a leave is approved, it will be for such length of time and on such other terms and conditions as the City approves, up to a maximum of one (1) year. The employee must have exhausted all sick, compensatory and vacation time. The City reserves the right to fill such positions and may not be able to hold an employee's job open while the employee is on discretionary leave. Thus, an employee on such leave cannot be guaranteed reinstatement at the conclusion of such a leave.

5.10 TERMINATION OF LEAVE OF ABSENCE

If an employee's absence while on leave will impair the functions of the City, the employee may be replaced after all family and medical leave is exhausted. If the previous position is not available the employee may apply for another position within the City if they are able to perform the essential functions of that job with or without reasonable accommodation.

However, the employee may be considered terminated upon missing a cumulative twelve (12) months of work due to injury or illness and if it is medically shown that because of chronic physical injury, ailment or condition:

1. The employee is unable to return to his/her position and perform the essential functions of the job with or without reasonable accommodations.
2. The employee is unable to transfer to another position within the City and perform the essential functions of that job with or without reasonable accommodation.

6 - BENEFITS

6.1 GENERAL

Except as otherwise noted, the benefits described in this section are available only to regular full-time employees. This policy expressly excludes third party workers. **The City's policies and practices with respect to any manner or any benefits now offered may be terminated at any time and are not to be considered as creating any contractual obligation on the City's part.**

6.2 INSURANCE

6.2.1 Medical Insurance

- A. **Employees.** Full-time employees are eligible to participate in the City's group health/dental insurance plan; coverage becomes effective 60 days after the date of hire. For details regarding the plans which are available, please consult the printed information available through the Human Resources office. If the employee chooses a plan for which there is a cost to the employee then the employees' portion of the premium will be withheld from the employee's paycheck. Should more than one health insurance plan be available to employees, the employee must choose among the plans at the time of the employee's hire, and the employee will be given an opportunity to choose among the available plans during the open enrollment time which occurs in the final quarter of each year.
- B. **Dependents.** If the employee chooses to purchase dependent coverage for his or her dependents, the employees' portion of the premium will be withheld from the employee's paycheck. When an employee enrolls for insurance with the City, or when a dependent becomes eligible for insurance (marriage, the birth of a child, or annual enrollment), the employee should immediately (within 30 days) inform Human Resources if he or she wants the dependent added for medical insurance coverage.

6.2.2 Dental Insurance. Full-time employees are eligible to participate in the City's group health/dental insurance plan; coverage becomes effective 60 days after the date of hire. For details regarding available dental insurance plans, please consult the printed information available through the Human Resources office. If the employee chooses a plan for which there is a cost to the employee then the employees' portion of the premium will be withheld from the employee's paycheck. Employees may cover their dependents under their City dental insurance plan. If the employee chooses to purchase one of these plans for his or her dependents, the employee's portion of the premium will be withheld from the employee's paycheck. Should more than one health insurance plan be available to employees, the employee must choose among the plans at the time of the employee's hire, and the employee will be given an opportunity to choose among the available plans during the open enrollment time which occurs in the final quarter of each year.

6.2.3 Life Insurance/AD&D. The City may pay for a life insurance and accidental death and dismemberment on each employee. Employees should consult the Human Resources office for more information.

The City has elected to include a Supplemental Death Benefit under the Texas Municipal Retirement System (TMRS) plan. If an employee subscribing to the TMRS retirement plan dies while employed by the City, TMRS will pay the designated beneficiary or estate a benefit approximately equal to current annual salary, plus any retirement benefits due.

6.2.4 Flexible Benefit Plan. The City makes a flexible benefit plan available to employees. This plan allows employees to purchase dependent health and dental insurance with pre-tax

dollars. The cost of insurance purchased through this plan will be deducted from the employee's salary before taxes are calculated, reducing the employee's taxable income and the amount of taxes paid by the employee.

6.2.5 Voluntary Benefits. The City may offer other low cost benefits at a group rate to employees via payroll deduction. Employees should consult the Human Resources office for additional information.

6.3 CONTINUING OR CONVERTING GROUP HEALTH INSURANCE UPON SEPARATION FROM EMPLOYMENT

6.3.1 Availability of Continuation Coverage

A. **General.** If an employee resigns or is separated from employment with the City, or if an employee's work hours are reduced, and if this event makes the employee or the employee's dependents no longer eligible to participate in one of the City's group health insurance plans, the employee and the employee's eligible dependents may have the right to continue to participate for up to eighteen months at the employee's (or the dependents') expense. If the employee is deemed disabled under the Social Security Act at the time the employee's separation from employment or if the reduction in hours occurs or within sixty days of these events, the employee may be entitled to continuation coverage for up to twenty-nine months.

B. **Extended Coverage.** Eligible dependents may also extend coverage, at their expense, for up to thirty-six (36) months in the City's group health insurance plans in the event of an employee's death, divorce, legal separation, or enrollment for Medicare benefits, or when a child ceases to be eligible for coverage as a dependent under the terms of the plan. The eighteen-month (18) continuation coverage period provided in the event of an employee's separation from employment or reduction in working hours may be extended to thirty-six months (36) for the employee's spouse and dependent children if, within that eighteen-month (18) period, the employee dies or becomes divorced or legally separated, or if a child ceases to have dependent status. In addition, if an employee enrolls for Medicare during the eighteen-month (18) period, the employee's spouse and dependent children may be entitled to extend their continuation period to thirty-six months (36), starting on the date that the employee enrolls for Medicare.

6.3.2 Cost of Continuation Coverage. If an employee or an employee's eligible dependents elects to continue as members of the City's health insurance plans, the employee will be charged the applicable premium charged the City by its carriers plus an additional percentage. The premium is subject to change if the rates charged to the City increase or decrease. If this election for continuation coverage is made, the employee has the right to convert this coverage to an individual policy assuming the plan permits with the City's insurance carrier at the end of the continuation period.

6.3.3 Termination of Continuation Coverage. Continuation coverage may end, however, if any of the following events occur: (1) failure to make timely payments of all premiums; (2) assumption of coverage under another group health plan, which does not exclude or limit coverage provided to the employee or dependent on account of a preexisting medical condition unless the preexisting condition does not apply due to the Health Insurance Portability and Accountability Act; or (3) the City's termination of its group health plans. If an employee enrolls for Medicare, the employee will no longer be eligible for continued coverage, but the employee's spouse and dependent children may be entitled to extend their continuation coverage.

6.3.4 Notice. The City's plan administrator or his/her designee will contact an employee concerning these options at the time the employee separates from employment or the employee's work hours are reduced. The plan administrator will contact an employee's listed qualified beneficiaries in the event of the employee's death or enrollment for Medicare benefits. However, in the event that an employee becomes divorced or legally separated, or one of an employee's dependents ceases to be eligible for coverage under the City's group health insurance plans, the employee and/or the employee's dependents are responsible for contacting the Human Resources office to discuss any continuation/conversion rights the employee and/or dependent may have. The employee and the employee's qualified beneficiaries are also responsible for notifying the Human Resources office within sixty days of qualifying for Social Security disability benefits.

6.3.5 Summary. This policy serves as a general guide only and is believed to be accurate at the time of publication. In addition, other options for obtaining health insurance coverage may be available to individuals whose insurance coverage under a City group health insurance plan is terminating. For further details regarding continuing or converting your group health insurance benefits, please contact Human Resources.

6.4 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

6.4.1 General. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), also referenced in section 1.3 of this policy:

1. Ensures that employees and their dependents who leave their employer's group health plan will have ready access to coverage under a subsequent employer's health plan regardless of health status and claims experience; and
2. Limits the length of time that health plans and health insurance issuers may limit benefits for a preexisting condition and prescribes conditions under which such a limitation may not be applied at all.

6.4.2 Limitation on Preexisting Condition Exclusions. HIPAA provides that group insurance plans and insurers may not exclude new employees' preexisting medical conditions for longer than 12 months. A preexisting condition is one for which advice, diagnosis, or treatment was given or recommended within the previous six (6) months. Preexisting conditions may not include the conditions of newborn or adopted children or a pregnancy existing on the date coverage takes effect.

6.4.3 Portability Provisions. HIPAA requires that when an employee moves to a new job, his or her subsequent employer or health plan must give the employee credit for prior continuous coverage. If an employee was covered for twelve (12) months or more by the previous employer or health plan without a gap in coverage of more than sixty-three (63) days, that employee must be eligible for insurance from the new employer regardless of any pre-existing condition. Credits of less than twelve (12) months would be applied against the twelve (12) month preexisting condition exclusion period.

- 6.4.4 Certificate of Creditable Coverage.** HIPAA requires that employers provide employees at the time they leave their jobs with information showing how long the employee was covered while working for the employer. The documentation is to be submitted to any subsequent employer or health plan to establish an appropriate credit.

New employees who can provide a certificate of creditable coverage will qualify for the limitation on preexisting exclusions under the City's group health plan(s), as set out in HIPAA.

Employees who are separating from the City should request a certificate of creditable coverage to present to their new employer in order to qualify for the limitation on pre-existing exclusions under the health insurance plan(s) of their new employer.

6.5 RETIREMENT

- 6.5.1 Texas Municipal Retirement System (TMRS).** The City provides a retirement benefit for employees through TMRS. The plan is administered in accordance with the Texas Municipal Retirement Act (Texas Government Code, Title 8, and Subtitle G) and is governed by a Board of Trustees appointed by the Governor. A brief outline of the plan is as follows:

1. Participation in the program is mandatory.
2. Municipal matching ratio is two-to-one at the time of retirement.
3. Service retirement eligibilities: - 5 yrs/age 60; 20 years at any age.
4. Vesting requirement is five years.

- 6.5.1 Deferred Compensation Plans.** Deferred compensation plans allow full-time employees to contribute to a retirement savings plan with pre-tax dollars through payroll deduction. Any money the employee contributes to the plan will be deducted from the employee's salary before taxes are calculated, reducing the employee's taxable income and the amount of taxes paid by the employee. Employees are encouraged to contact Human Resources for information on the deferred compensation plans currently available to employees.

- 6.5.2 Insurance for retirees.** Employees hired prior to August 1, 2005 and who retire at age 60 AND with 20 years of service are eligible to continue participation in the City's Group insurance plan. These retirees are eligible for coverage until the age of 65 and/or become eligible for Medicare or until they become eligible for coverage under another health plan. City employees hired after August 1, 2005 are **not eligible** to continue participation in the City's Group Insurance plan.

6.6 LONGEVITY

Regular full-time employees will be compensated at a rate of \$4.00 per month for each year of service (after the completion of one year of continuous service) up to a maximum of 25 years or \$1,200.00. Longevity pay will be issued once annually in the form of a check (direct deposited) separate from the employees' regular payroll check usually during the second pay period in November. In order to receive longevity pay, the employee must be employed on the date of issuance of the longevity check.

6.7 TUITION REIMBURSEMENT

In recognition of the long-range contribution that additional job-related education can make to the City of Marshall, it is the policy of the City of Marshall to provide educational assistance to its employees in accordance with the guidelines described in this policy.

6.7.1 Eligibility. To be eligible for educational assistance, employees must have regular full-time status and have been employed for a minimum of one (1) year.

6.7.2 Procedures

1. Eligible employees who want educational assistance must have approval of the City Manager or his/her designee before enrollment.
2. Eligible employees may be reimbursed only for courses of study and book expenses which the City determines are directly related to the employee's potential for advancement to a position within the City and to which the employee has a reasonable expectation of advancing. Required certification and continuing education courses shall be reimbursed through department budget as a conference and training expenditure.
3. Reimbursement will be paid only for courses offered by accredited institutions.
4. Employee must complete a request form, indicating the name of course, school, hours attending, reason for taking course (pursuing degree, etc.). The employee's supervisor will review the request to ensure that the class schedule will not conflict with his/her job schedule. The supervisor may grant an alternative work schedule that will not adversely impact City operations.
5. The City Manager, or his/her representative and supervisors, will consider the following factors in evaluating requests for educational assistance:
 1. The nature and purpose of the course of study;
 2. The benefits to be derived by the employee and the City; and
 3. The estimated cost.
6. Classes must not be scheduled during normal work hours, except as may be approved by the City Manager.

6.7.3 Reimbursement Schedule. Employee reimbursement for eligible educational assistance will be upon the grade received for the course, as follows:

- 1) For a grade of "A" (90-100), 85% of tuition & books;
- 2) For a grade of "B" (80-89), 70% of tuition & books;
- 3) For a grade of "C" (70-79), 60% of tuition & books
- 4) No reimbursement will be made for a grade lower than "C" (69 or less) or if the employee does not pass a pass-fail course.
- 5) A "pass-fail" course will be reimbursed at 60% of tuition.
- 6) The maximum annual educational assistance per employee is \$1,000.00.

6.7.4 Certification. Employees seeking reimbursement for educational expenses must submit to Human Resources or his/her designee a certified transcript of their grades and receipts for the expenses incurred.

Records of all education programs completed by each employee will be maintained by Human Resources or his/her designee.

Employee agrees to work for the City of Marshall for 2 (two) years after receiving Tuition Reimbursement.

6.8 EXPENSES

6.8.1 General. The City will reimburse employees for approved expenses incurred by the employee in the course of the employee's employment. Expenses which will be reimbursed or otherwise paid by the City are discussed below.

6.8.2 Protective Equipment. All safety and protective equipment necessary for the performance of an employee's job duties will be provided by the City. Protective equipment shall be the exclusive property of the City and shall remain at the job site or at a City facility where appropriate.

6.8.3 Uniforms. Uniform guidelines are established by the City Manager through Administrative Directive.

6.8.4 Business Related Expenses

A. **Seminars.** Upon prior approval of the department, the City will pay the cost of seminar registration for employees for seminars, conferences and other training programs related to the employee's employment with the City.

B. **Travel Expenses.** Employees will be reimbursed reasonable travel expense for attendance at seminars, conferences, and other training programs outside of Marshall, upon prior written approval of their department director. Reasonable travel expense include, but are not limited to:

1) *Transportation costs*, which may include:

1. If the employee drives a City car to the seminar, the cost of gas and any necessary emergency repairs.
2. If the employee is required to travel by public transportation, air, bus or train; the cost of the round-trip air, bus or train fare for the employee.
3. If the employee drives his or her own car, the lesser of air fare to the location of the seminar (if available), or mileage at the reimbursement rate allowed by the Internal Revenue Service.
4. Car rental at the location of the seminar, if the employee travels to the seminar location by a means other than automobile.
5. Cab fare while attending the seminar, if the employee does not rent a car.
6. City employees receiving a monthly car allowance shall receive reimbursement only on travel outside a seventy-five (75) mile radius of the Marshall city limits.

2) *Lodging costs.* Employees should request government rates, when possible, unless a lower rate is available.

3) All travelers will be given a per diem meal allowance in accordance with the reimbursement rate allowed by the Internal Revenue Service for the destination city.

4) *Phone calls* to the employee's City office, or regarding City business.

C. **Costs which Will Not Be Reimbursed:** The following costs will generally not be reimbursed:

- 1) Alcoholic beverages;
- 2) Entertainment expenses;
- 3) Personal phone calls;
- 4) Travel expenses of friends or relatives who accompany the employee on the trip.

6.9 IMMUNIZATIONS

6.9.1 Immunizations Provided by City

A. **General.** Employees in positions which may expose the employee to certain diseases may obtain immunizations at the cost of the City. Specific requirements are outlined under state

and local law.

B. Post-Accident or Post Exposure. When an employee has been injured in the work-place, or encountered a possible exposure to a communicable disease, the City will pay for immunizations recommended by the employees' treating physician. The Texas Department of Insurance, Workers' Compensation Division and/or the County Health Department may impose additional responsibilities upon the City and the affected employee.

6.9.2 Department Regulations. Each department may establish rules and regulations regarding immunization of employees as approved by the City Manager. When department rules or regulations require immunization of employees, employees may decline the immunization by providing written notice on a form provided by the City.

6.9.3 Additional Immunizations. Department Directors may request that additional immunizations be made available to department employees as approved by the City Manager.

6.9.4 Record of Immunizations. Records of immunizations provided by the City must be maintained in the employees' medical records with the City.

6.10 PHYSICAL EXAMINATIONS

6.10.1 General. The City requires medical and physical examinations only where such examinations are necessary to determine an employee's fitness to perform the essential functions of the employee's position. This section sets out those situations in which medical or physical examinations may be required.

6.10.2 Physical Agility Tests. Departments may require all applicants for a position to perform certain physical activities to test the applicants' fitness to perform the physical requirements of the position. Examples of such tests include, but are not limited to, physical agility tests for Police Officers and Firefighters, lifting and/or digging exercises for laborer positions with Public Works, Water Utilities, Parks and Recreation Departments, and other positions that are determined to be physically demanding.

6.10.3 Drug and Alcohol Testing. The City's policy for testing of applicants for employment and employees is set out in Chapter 7, Alcohol & Controlled Substance Testing Policy.

6.10.4 Medical Examinations. Whenever a department director has reason to believe that the physical or mental condition of an employee is endangering his or her own health or safety or the health or safety of other employees or has rendered the employee incapable of performing the essential functions of the employee's position, the department director may request that the employee submit to a medical examination. The request for medical examination must be made in writing to the Human Resources Manager/Civil Service Director and must specify the scope of the examination being requested and the reasons for requesting the examination. Expenses for medical examinations requested by the City will be paid by the City.

7 - EMPLOYEE CONDUCT

7.1 PERSONAL APPEARANCE

General. The director or division manager retains the discretion to establish appropriate dress guidelines for the work area and to determine if uniforms are to be worn.

7.1.1 MONDAY THROUGH THURSDAY DRESS CODE

The following is appropriate;

Females and Males- are asked to dress professional, clean and well-groomed. Employees should wear dress pants, shirts, skirts, or jackets that are not overly revealing or may be distracting to customers or employees. This includes city-issued uniform attire, if applicable.

Only City-issued caps are to be worn (if applicable). All city-issued caps must be positioned properly, i.e. in a straight-forward position, during work hours. Visible tattoos should not be vulgar, in poor taste and/or offensive.

This policy applies to all employees within the City of Marshall.

CASUAL DAYS (INCLUDING FRIDAYS)

Ideally, casual day is defined as respectable blue jeans and clean, unworn sneakers. Those employees required to represent the city in public, in court, or any other public forum on any casual dress day are always required to be in city-issued and identifiable work uniforms.

CLOTHING NEVER ALLOWED

- Torn, patched, or faded clothing even if purchased new in such condition
- Clothing with printed messages or pictures that are offensive
- Torn athletic shoes, house slippers, or flip flops
- Non City-issued and revealing shorts, revealing low rider or sagging pants or shirts that reveal the mid-section
- Bare-back dresses, blouses, single layer tank or tube tops, or muscle shirts
- Warm-up suits
- No nose, tongue, lip or other head piercings are allowed.

If an employee is found in violation of this policy, the department head may request the employee change his/her attire or take appropriate disciplinary action.

7.2 OUTSIDE EMPLOYMENT

7.2.1 General. No employee shall engage in outside employment which interferes, or is a conflict, with the employee's employment with the City. If an employee's outside employment is found to be a conflict of interest, the employee shall be notified of such fact and directed to terminate the conflicting outside employment.

7.2.2 Employment Which Is Deemed to Be a Potential Conflict with City Employment. Self-employment or ownership providing goods or services to the City or regulated by the City, or as otherwise restricted by the City Charter.

7.3 CONFLICT OF INTEREST

7.3.1 General. Employees shall refrain from any activities that would cast doubt on the employee's ability to act with total objectivity with regard to his/her position with the City of Marshall. This section shall not prevent an employee from working for a person or entity doing business with the City when the employee's position with the City is not one where the employee can affect the decision of the City to use the services of the person or entity, provided such employment is not otherwise prohibited by these policies.

7.3.2 Prohibited Activities. No employee shall:

- A. Disclose confidential information or information from closed records to any person, except as required by the employee's employment, state statute, or court order.
- B. Use information obtained in the course of or by reason of his/her employment with the City for financial gain to the employee or the employee's spouse; the children, parents, siblings, aunts, uncles, nieces, nephews, grandchildren and grandparents of the employee or the employee's spouse; or any business with which the employee or such relative is associated.
- C. Accept any item of value from any person or entity doing business with the City or having any matter before the City.
- D. Act or fail to act in his/her capacity as a City employee in exchange for any payment, offer to pay, or promise to pay anything of value in exchange for such act or failure to act.
- E. Act or fail to act in his/her capacity as a City employee in order to specially benefit the employee or the employee's spouse; the children, parents, siblings, aunts, uncles, nieces, nephews, grandchildren and grandparents of the employee or the employee's spouse; or any business with which the employee or such relative is associated.
- F. Act or fail to act in his/her capacity as a City employee in order to coerce or extort from another anything of value for the employee or the employee's spouse; the children, parents, siblings, aunts, uncles, nieces, nephews, grandchildren and grandparents of the employee or the employee's spouse, or any business with which the employee or such relative is associated.

7.3.3 Vendor Relations. Gifts of any type should never be accepted by any employees or relative involved in a bid, proposal, or contract during the bid process.

- A. Prohibited gifts – Acceptance of trips, money, and merchandise of value in excess of \$50.00, personal services, or work to be provided by City suppliers, and offers of future employment from City suppliers, or any similar gift is prohibited.
- B. Acceptable gifts – Gifts that would not ordinarily be interpreted as affecting an employee's impartiality, such as an occasional business lunch, potted plants, flowers, boxes of candy or other food for office personnel, advertising office supplies such as pencils, calendars, or pens and other token gifts of small value are not prohibited.
- C. Vendor lunches – Lunches are often a convenient time for meeting with vendors. Repeated

lunches that are paid for by the vendor should be avoided and the employee may want to consider having the City pay for their or both lunches, assuming there is available budget money.

- D. Vendor-sponsored training – Attending vendor sponsored training which includes incidental lunches or refreshments are appropriate if it helps the employee to do their job more effectively. The City, as part of a department's training budget, should generally pay travel and lodging costs for out-of-town training unless it is part of a contract or bid award. If the vendor pays travel costs, the employee should carefully consider that the location of the training and the length of the stay do not create an appearance of personal benefit and/or favoritism to the vendor.

7.4 NEPOTISM

7.4.1 General. No employee may participate in the hiring of a relative, and no employee may work under the supervision of a relative. Additionally, two relatives shall not be employed in a full-time or part-time capacity in the same business unit unless approved in writing by the City Manager. As in all cases of employment with the City, the City reserves the right to transfer or reassign any employee at any time with or without cause.

7.4.2 Existing Relationships. Relatives employed in violation of this policy as of the date of adoption of this policy may remain employed in the same business unit so long as one relative does not, directly or indirectly, through promotion, transfer, or otherwise, supervise or have the opportunity to supervise the other relative, or so long as one relative does not occupy a position which has influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

7.4.3 Relative defined. For purposes of this provision, relative is defined as:

CONSANGUINITY (BLOOD)

FIRST DEGREE	SECOND DEGREE	THIRD DEGREE
Father	Brothers	Uncles
Mother	Sisters	Aunts
Children	Grandparents	Nephews
	Grandchildren	Nieces
		Great-grandparents
		Great-grandchildren

AFFINITY (MARRIAGE)

FIRST DEGREE	SECOND DEGREE	
Spouse	Sister-in-law	(Both employee' and spouse's)
Step-children	Brother-in-law	(Both employee' and spouse's)
Step-parent	Spouse's Grandparents	
Father-in-law	Spouse's Grandchildren	
Mother-in-law		
Son-in-law		
Daughter-in-law		

7.4.4 Business Unit Defined. For purposes of this provision, a business unit is considered to be each division within a department, wherein the nature of jobs within the division can function independently without being intertwined or closely dependent on jobs from another division. If a question arises with regard to whether a business unit conflicts with this policy, the City Manager shall resolve such conflict by written determination

Examples of multiple divisions that are considered to be so closely related as to form one business unit:

- A. Police Administration, Patrol, CID and Special Services are considered to form one business unit; and
- B. Fire Prevention, Suppression, and Emergency Medical Services are considered to form one business unit.

7.4.5 City Council and City Manager. No person related within the consanguinity and affinity relationship to any member of the City Council or the City Manager shall be appointed to any office, position, or clerkship or other service of the City except if the individual is employed in the position immediately before the election or appointment of the Council Member or appointment of the City Manager to whom the individual is related and that prior employment is continuous for at least thirty (30) days if the Council Member or City Manager is appointed or six (6) months if the Mayor or council is elected, this policy shall not apply, provided participation in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees. (Texas Government Code Chapter 573; Texas Local Government Code Chapter 171; Marshall Code of Ordinances Article VI, Section 127.)

7.4.6 Supervision by Relatives. No employee shall be employed, promoted, transferred or reinstated in or to any position and shift where the employee will supervise directly or be supervised directly by any relative.

7.4.7 Marriage. Upon marriage, where a situation of nepotism as defined by this policy, is created, the situation of nepotism may be resolved within sixty (60) days by one of the employees' transfer or resignation from employment with the City.

7.4.8 The City has no desire to become involved in the personal lives of employees. Employee personal relationships, involving other employees, family members, or other individuals, on their personal time and off of City property are generally outside the City's area of responsibility. However, the City will become involved and will take appropriate action if:

1. problems resulting from such relationships manifest themselves on the job; or
2. a supervisor engages in such a relationship with a subordinate who reports directly and immediately to him, or the involved supervisor has influence over the other's employment, promotion, salary administration, or other relevant management or personnel considerations.

A minimum, reassignment may result from those instances involving two or more employees. Depending on the circumstances, other actions, such as demotion, termination, or disciplinary action may be necessary.

7.5 POLITICAL ACTIVITY

7.5.1 Voting. The City encourages each employee to exercise his/her right to vote in all elections.

7.5.2 City Time, Uniforms, Equipment and Facilities. Employees shall not campaign for or against any individual or ballot measure while on duty with the City, or while wearing a City uniform.

Employees shall not use, or allow to be used, City equipment or facilities in any campaign for or against any individual or ballot measure. (Civil Service employees refer to 143.086 LGC). This prohibition includes, but is not limited to:

1. Using his/her official capacity or employment to influence, interfere with, or otherwise affect the results of any election or nomination for office.
2. The wearing of political pins, stickers or decals while on duty or while in the workplace;
3. The display of campaign materials in work areas, or on City bulletin boards, vehicles, equipment or City facilities; and
4. The display of campaign “bumper stickers” of city elections, including individual or ballot measures on vehicles parked in any City owned or controlled parking lot or parking space.

7.6 USE OF ELECTRONIC MEDIA

7.6.1 General. All business equipment and communications systems are the City's property and are to be used for work-related purposes. Business equipment and communications systems include, but are not limited to: computer (including e-mail), electronic (including paging), and telephone communications (including voice mail and cell phone) systems; computers, facsimile machines and copying machines; and any other equipment or systems used for the transmission, reception, or storing of information. This policy on the use of electronic media applies whether an employee accesses the City's business equipment and communications systems in the workplace or from outside the workplace.

- A. **Monitoring.** To ensure proper use of communications systems and business equipment, the City may monitor the usage of these systems and equipment from time to time. The City reserves the right to monitor its communications systems and business equipment in order to ensure that its property is being used for work purposes, and as necessary to conduct the business of the City.
- B. **Disclosure Restricted.** Employees should not disclose information or messages transmitted or received through or by or stored in City communications systems and business equipment except only to authorize employees.
- C. **No Right to Privacy.** Employees do not have personal privacy rights in any matter created, received, or sent through the communications systems or business equipment.
- D. **Recording of Telephone and Other Conversations.** No employee shall record any telephone or other conversation with any other person(s) except as follows:
 1. Recording of public meetings; or
 2. Circumstances specifically authorized by the City Manager; or
 3. Otherwise provided for law enforcement and emergency personnel.

7.6.2 When these Policies Are Applicable. These policies and procedures apply to all communications systems and business equipment which are: (1) accessed on or from City premises; (2) accessed using City communications systems or business equipment, or via City-paid access methods; or (3) used in a manner which identifies the individual with the City. These policies cover access to City networks from an employee's home or using an employee's own equipment, and the use of an employee's equipment while identifying the user as a City employee or identifying transmissions made as connected with the City.

7.6.3 Restricted Communications. The following types of communication are prohibited.

- A. **Harassing, Obscene or Illegal Communications.** City communications or business equipment may not be used for knowingly transmitting, retrieving or storing any communications of a harassing nature which disparage any individual or group based on their race, gender, religion, ethnic or national origin, ancestry, disability, sexual orientation or age, which are obscene or sexually oriented; which are of a defamatory or threatening nature; which are "chain letters", or for any other purpose which is illegal or otherwise against City policy or contrary to the City's interest.
- B. **Anonymous Communications.** No communications may be sent to or from City communications systems or business equipment which attempt to hide the identity of the sender or represent the sender as someone else except as may be necessary and authorized by the City Manager for law enforcement purposes.
- C. **Personal Communications.** City communications systems and business equipment are primarily for City business use. Use of City communications systems or business equipment for personal, non-business purposes other than on a limited, occasional or incidental basis, is not allowed.
- D. **Outside Communications.** Any messages or information sent by an employee to one or more individuals via a City communications system or using City equipment (e.g., e-mail, bulletin board, on-line service, pagers, or Internet) are statements identifiable as coming from, and thus may be attributed to, the City. All communications sent by employees via a network must comply with this and other City policies and may not disclose any confidential or protected information.

7.6.4 Other Use Restrictions

A. Access. Employees may not:

- 1) Use another employee's password or access code (even with that employee's permission) unless authorized by City management.
- 2) Authorize anyone else to use his or her password or access code unless authorized by City management.
- 3) Attempt to discover another user's password or access code except that passwords and access codes are available to the City's systems administrator and may be made available to an employee's department director.

B. Software; Computer Programs. Employees may not:

- 1) Copy, disclose, or transfer any software provided by the City, except upon permission of the City for City business.
- 2) Install their own software on a City computer without the permission of the Information Technology Manager.
- 3) Intentionally write, produce, generate, copy, propagate, or attempt to introduce any computer code designed to self-replicate, damage, or otherwise hinder the

performance of any computer's memory, file system, or software. Such software is often called a virus, worm, Trojan horse, or similar name.

C. Tampering. Employees may not:

- 1) Engage in conduct that interferes with the normal and proper operation of the City's communications systems or business equipment, or which adversely affects the ability of others to use City communication systems or business equipment.
- 2) Copy, rename, change, examine, or delete files (including programs, subroutine libraries, or data) that was created by someone else without prior authorization from that person.
- 3) Intentionally damage any City communications system or business equipment, intentionally damage information created by another, intentionally misuse communications system or business equipment resources, or allow others to misuse communications system or business equipment resources.
- 4) Tamper with terminals, microcomputers, printers or other associated equipment.
- 5) Collect or discard output other than your own without the owner's permission.
- 6) Attempt to break into any communications system or business equipment whether of the City or another organization (hacking or cracking).

D. Other. Employees may not:

- 1) Use City communications systems, business equipment or programs for illegal purposes.
- 2) Use City time and resources for personal gain.
- 3) Refuse to cooperate with a reasonable investigation of the use of the City's communications systems or business equipment.

7.6.5 No Expectation of Privacy. The City does not routinely examine user files. However, the following conditions should be noted:

A. Authority of City. To protect the integrity of the City's communications systems and business equipment, and protect legitimate users from the effects of unauthorized or improper use of these facilities, the City has the authority to take any of several steps. These include the authority to:

- 1) Limit or restrict any employee's usage of the City's communications systems or business equipment, or any system resources that may undermine the proper use of that system;
- 2) Inspect, copy, remove or otherwise alter any data, file, or electronic information created and/or communicated by an employee using e-mail, word processing, utility programs, spreadsheets, voicemail, telephones, Internet/www access, etc.; and
- 3) Take any other steps deemed necessary to manage and protect the City's communications systems and business equipment. **This authority may be exercised with or without notice to the user.** The City disclaims responsibility for any loss or damage to data or software that results from its efforts to enforce these rules.

B. Monitoring. The City may routinely monitor usage patterns for both voice and data communications (e.g., number called or site accessed; call length; times of day calls) to verify usage patterns and costs.

C. Obtaining Documents. It may occasionally be necessary for City employees to access the files of another employee to obtain documents or information necessary to the conduct of City business.

D. Compliance with these Policies. The City also has the right, in its discretion, to review any employee's electronic files and messages and usage to the extent necessary to ensure that electronic media and services are being used in compliance with the law and with this and other City policies.

E. Use of Security Measures. Each employee who uses any security measures on City-supplied communications systems or business equipment must provide his/her supervisor with his/her passwords for City use if required. (Example: There may be a need for the City to access an employee's system or files when he/she is away from the office.)

7.6.6 Confidentiality. Employees must respect the confidentiality of other people's electronic communications and may not attempt to read, "hack" into other systems or other people's logins, or "crack" passwords, or breach computer or network security measures, or monitor electronic files or communications of other employees or third parties except by approval of the City Manager.

7.6.7 Copying

A. Written Materials. Anyone obtaining electronic access to other entities' or individuals' materials must respect all copyrights and may not copy, retrieve, modify, or forward copyrighted materials except as permitted by the copyright owner or a single copy for reference use only.

B. Software. Employees may not copy, use, or distribute software or computer programs in violation of law

7.6.8 External E-Mail. When sending email outside the City, the following guidelines should be followed:

A. MAIL ON THE INTERNET IS NOT SECURE. Never include in an e-mail message anything which you want to keep private and confidential. E-mail is sent unencrypted and is easily readable.

B. Observe rules established by other systems.

C. Open e-mail promptly and delete it when no longer needed.

7.7 CONTROLLED SUBSTANCE AND ALCOHOL-FREE WORKSPACE

- 7.7.1 Purpose.** It is the City's goal to provide a drug-free, healthful, and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory and safe manner.
- 7.7.2 Prohibition against Alcohol and Illegal and Unauthorized Drugs.** While on duty, while on the premises of the City of Marshall, while conducting City-related business or other activities off premises, while wearing clothing with the City's name or logo, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment, an employee may not use, possess, distribute, sell or be under the influence of alcohol (except under the limited circumstances described below), inhalants, synthetic substances, illegal drugs, including drugs which are legally obtainable but which were not legally obtained, and prescribed or over the counter drugs which are not being used as prescribed or as intended by the manufacturer.
- 7.7.3 Prohibition against Illegal and Unauthorized Drug Related Paraphernalia.** This policy also prohibits the use, possession, distribution and sale of drug related paraphernalia while on the premises of the City of Marshall, while on duty, while conducting City related business or other activities off premises, while driving a City owned or leased vehicle or while operating or using other City owned or leased property or equipment. Drug related paraphernalia includes material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling or otherwise introducing illegal or unauthorized drugs into the body.
- 7.7.4 Permissive Use of Prescribed and Over the Counter Drugs.** The legal use of prescribed and over-the-counter drugs is permitted while on the premises of the City of Marshall, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment **only if** it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens, or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling unsteady.
- 7.7.5 Use of Alcohol.** The use of alcohol by a City employee while on duty is prohibited. At no time may an employee under the influence of alcohol drive a City-owned or leased vehicle or operate or use other City-owned or leased property or equipment. Further, an employee on duty or conducting City business, including City-related business entertainment, may not drive his or her own personal vehicle while under the influence of alcohol. No employee in his work-related capacity should ever be impaired because of the excessive use of alcohol. Absent specific approval by the City Manager, City employees may not bring alcoholic beverages on City premises including parking lots adjacent to City work areas and may not store or transport alcohol in a City-owned or leased vehicle.
- 7.7.6 Police and Fire Department Exemptions.** Certain City of Marshall Police and Fire Department employees may be required to be in possession of alcohol and/or drugs in carrying out their job duties. Such employees will be exempted from certain portions of this policy under certain limited conditions. Additional guidelines are established in Police and Fire Department operating procedures.
- 7.7.7 Mandatory Disclosure by Employees.** Employees taking prescription medication and/or over-the-counter medication must report such use to either their Department Head or to the Human Resources Manager/Civil Service Director if there is a reasonable likelihood the medication will

impair the employee's ability to perform the essential functions of his job (or operate a vehicle or other equipment, if applicable) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling unsteady.

- 7.7.8 On-Call Employees.** Employees scheduled to be on call are expected to be fit for duty upon reporting to work. Any employee scheduled to be on call, and who is called out, is governed by this policy. At times an employee who is not scheduled to be on call may, nevertheless, be called out. If this or any other situation occurs where the employee called out is under the influence of drugs and/or alcohol, such that reporting to work would result in a violation of this policy, the employee must so advise the appropriate supervisor on duty. The employee will not be required to report to work under such circumstances.
- 7.7.9 Off-Duty Conduct.** The City of Marshall may take disciplinary action, up to and including termination of employment, if an employee's off-duty use or involvement with drugs or alcohol is damaging to the City's reputation or business, is inconsistent with the employee's job duties, or when such off-duty use or involvement adversely affects the employee's job performance.
- 7.7.10 Mandatory Reporting of Convictions.** Employees must notify their Department Head and the Human Resources Manager/Civil Service Director, in writing of any criminal drug conviction, a plea of guilt or *nolo contendere*, placement of an employee on deferred adjudication, or pre-trial diversion for a violation occurring off duty and/or in the workplace. Such notification must be provided no later than five calendar days after the conviction plea, or placement on any type of probation or pre-trial diversion.
- 7.7.11 Rehabilitation/Treatment.** It is the City's desire to assist employees who voluntarily request assistance with their alcohol or drug dependency. For City support and assistance, however, an employee must acknowledge his problem and seek and accept counseling and/or rehabilitation before it impairs his job performance and/or jeopardizes his employment.

An employee, who has successfully completed the probationary period and who has a drug or alcohol problem that has not resulted in, and is not the immediate subject of disciplinary action or criminal prosecution of any kind, including but not limited to filing of an information or indictment, probation, deferred adjudication, or pre-trial diversion may request approval to take a leave of absence to participate in a rehabilitation or treatment program. An employee may not enroll in a rehabilitation or treatment program in lieu of disciplinary action.

A leave of absence to participate in a rehabilitation or treatment program may be granted in the City's sole discretion. Factors considered by the City in deciding whether to grant leave include: the length of the employee's employment with the City; the employee's prior work and disciplinary history; the employee's agreement to abstain from the use of the problem substance and follow all other requirements of the rehabilitation/treatment program; the reputation of the program and the likelihood of a successful outcome; the employee's compliance with City policies, rules and prohibitions relating to conduct in the workplace; and the degree of resulting hardship on the City due to the employee's absence. Unless otherwise required by law, it is the City's policy to grant such a leave of absence only once during the course of an individual's employment with the City.

Note: Under certain circumstances, treatment for substance abuse may be covered under the City's Family Medical Leave Act Policy.

The cost of any rehabilitation or treatment may be covered under the City's group health insurance policy. In any case, the employee is responsible for all costs associated with any rehabilitation or treatment program.

During time off for a City approved rehabilitation or treatment program, the employee must use any available vacation leave, sick leave, accrued holiday, or other accrued paid leave time. If the employee has no paid time off available, the time away from work will be unpaid. Where applicable, any time off for rehabilitation or treatment under this policy will also be designated as leave under the City's Family and Medical Leave Act policy.

If the employee successfully completes his prescribed rehabilitation or treatment, the City will make reasonable efforts to return the employee to his prior position or one of similar pay and status. However, employment with the City following a City-approved leave for rehabilitation or treatment is conditioned on the following:

- Initial negative test for drugs and/or alcohol before returning to work;
- A written release to return to work from the City approved rehabilitation or treatment facility/program;
- Periodic and timely confirmation of the employee's continuing cooperation and successful participation in any follow-up or on-going counseling, testing or other treatment required in connection with the City approved rehabilitation or treatment program, if applicable;
- In addition to any testing required in connection with the employee's ongoing treatment or follow-up to treatment, all employees who participate in rehabilitation or treatment under this section will also be required to submit to periodic and/or random testing by the City at any time following the employee's return to work following treatment;
- The employee must sign a formal written agreement to abide by the above conditions, as well as any other conditions deemed appropriate by the Human Resources Manager/Civil Service Director. The employee must meet with the Human Resources Manager/Civil Service Director to discuss the terms of his or her continued employment and sign the formal agreement before returning to work.

7.7.12 Policy Violations. Violations of this policy will generally lead to disciplinary action, up to and including immediate termination of employment and/or required participation in a substance abuse rehabilitation or treatment program. Police and Fire Department employees should also consult their department's policies for additional disciplinary rules regarding violations of the Drug and Alcohol Use Policy.

Employees with questions or concerns about substance dependency or abuse are encouraged to discuss these matters with their immediate supervisor, their Department Head or the Human Resources Manager/Civil Service Director to receive assistance or referrals to a substance abuse counselor or other appropriate resources in the community.

7.8 CONTROLLED SUBSTANCE AND ALCOHOL TESTING

7.8.1 Testing of Applicants. All applicants to whom a conditional offer of employment has been extended and all employees subject to this policy will be required to submit to testing for alcohol and/or illegal and unauthorized drugs as directed. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of employment for current employees, may be rendered ineligible for continued employment with the City.

7.8.2 Testing of Employees.

- a) **Authorization for Testing.** All drug and alcohol testing must normally be authorized in advance by both the employee's Department Head and the Human Resources Manager/Civil Service Director. If the Department Head is unavailable within a reasonable period of time, the Human Resources Manager/Civil Service Director may, in his/her sole discretion, authorize the testing of an employee. If the Human Resources Manager/Civil Service Director is unavailable within a reasonable period of time, the Department Head may, in his/her sole discretion, authorize the testing of an employee. Supervisors are responsible for ensuring that employees are transported to the testing facility.

Police and Fire Department employees are also subject to any applicable departmental rules and regulations regarding testing for illegal/unauthorized drugs and alcohol.

- b) **Reasonable Suspicion Testing.** An employee shall not report for duty or remain on duty while having an alcohol concentration of 0.01 or greater. There will be no tolerance for alcohol use and/or the use of illegal drugs or abuse of controlled substances in the workplace.

For purposes of this policy, reasonable suspicion is a belief based on clearly articulated observations sufficient to lead a prudent supervisor to suspect that the employee is under the influence of drugs and/or alcohol and is impaired in his ability to perform the functions of the job or his ability to safely perform the job is reduced. All employees are subject to reasonable suspicion testing for drug and alcohol abuse based on objective facts and/or observable on-duty behavior. Examples of such objective facts or observable behavior include observation of alcohol or drug use, apparent physical state of impairment, incoherent mental state, changes in personal behavior that are otherwise unexplainable, deteriorating work performance that is not attributable to other factors, evidence of possession of substances or objects which appear to be illegal, or unauthorized drugs or drug paraphernalia.

Supervisors who refer an employee for reasonable suspicion testing must document the specific factors that support reasonable suspicion testing, e.g., the who, what, when, and where of the employee's behavior and other symptoms, statements from other employees or third parties, and other evidence supporting the reasonable suspicion testing.

The employee will be provided with transportation to the testing facility, and a supervisor or other designated City representative will be required to remain with the employee during the testing process. The City will also make arrangements to have the employee transported home following the testing, if necessary.

c) **Post-Accident/Injury Testing.** All employees will undergo drug and alcohol testing in the following circumstances to rule out the possibility of drug or alcohol related accidents or injuries:

1. When the employee, acting in the course and scope of his employment, sustains personal injuries requiring medical attention from a medical treatment facility, and/or
2. When the employee is involved in a moving vehicular accident with City-owned equipment or vehicles, or in a personal or rented vehicle while acting in the course and scope of his/her employment, where there is:
 - a. A fatality, or
 - b. An injury resulting from the accident in which either party requires medical attention from a medical treatment facility, or
 - c. Damage to any vehicle resulting in quantifiable property damage, as determined by the investigating officer at the scene of the accident.

Accident Procedure

When an employee is in an accident, please follow the steps listed below:

- a. Human Resources needs to be notified
- b. Employee needs a Drug test (within 3 hours of the accident)
 - a. A supervisor needs to take the employee to designated facility
- c. Employee & Supervisor needs to complete the Employee Vehicular Incident report
 - a. This form needs to be sent to the communication coordinator (within 24 hours of accident)
- d. Employee & Supervisor needs to complete Workers Compensation Injury report
 - a. This form needs to be sent to HR (within 24 hours of accident)
- e. Supervisor needs to email City Manager with the details of the accident (within 24 hours of accident)
- f. No vehicle should get fixed without approval from risk management.

This policy is not intended to delay necessary medical attention for injured persons following an accident or injury or to prohibit a City driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident.

- a. **Random Testing - Safety Sensitive Positions** are considered jobs where an employee's use of drugs or alcohol could create a threat to safety whereby the employee's ability to perform assigned duties is impaired and the performance of those duties in such mental or physical condition creates or could create a safety hazard that has caused or could cause injury or harm to the employee or

other employees or citizens or damage to property. **An employee in a Safety Sensitive Position shall not report to work (1) within 4 hours after the consumption of any alcoholic beverage; (2) While under the influence of alcohol; (3) While using any drug that affects the person's faculties in any way contrary to safety; or (4) While having an alcohol concentration of 0.04 or greater in a blood or breath specimen. Alcohol concentration means grams of alcohol per deciliter of blood or grams of alcohol per 210 liters of breath. "Under the influence of Alcohol" for a Safety Sensitive Position can include suffering from the adverse effects of consumption of alcohol, even when no concentration of alcohol is present in the blood (I.e. impaired performance due to "hangover.")**

Examples of "*safety-sensitive*" positions include, but are not limited to:

- a. Fire Fighters;
- b. Police Officers and Police Reserve Officers;
- c. Specialized Police and Fire positions including K-9, Marshall Criminal Apprehension Team (MCAT), Special Weapons and Tactics (SWAT), SWAT EMTs/Paramedics, and SWAT Reserves;
- d. Communication Specialists/911 Operators;
- e. parks and recreation positions involving regular contact with children such as Lifeguards;
- f. positions falling under the Department of Transportation rules and regulations.

Safety-sensitive positions will be subject to a minimum of 4 random tests annually. A minimum of 10% of the total number of employees in this classification will be tested with each random test.

Testing Procedures. Drug and alcohol testing will occur as soon as reasonably possible following an accident or injury or in concert with any medical treatment administered at the time of the accident or injury, or as soon as authorized for reasonable suspicion testing. All substance abuse testing will be performed by an approved laboratory or health care provider chosen by the City. All positive test results will be subject to confirmation testing.

Types of Tests. Testing may include one or more of the following: urinalysis, hair testing, breathalyzer, intoxilyzer, saliva, or other generally accepted testing procedure.

Refusal/Lack of Cooperation with Testing. An employee who leaves the scene of an accident or injury before a required test is administered, fails to remain readily available for testing, or attempts to alter or tamper with a sample or any other part of any testing process will be subject to disciplinary action, up to and including termination.

Confidentiality of Records. Drug and alcohol tests will be maintained in a confidential file separate and apart from the employee's personnel file. Any medically related information will be confidential and accessible only by the Human Resources Manager/Civil Service Director; supervisors/managers on a need to know basis, including those who have a need to know about necessary restrictions on the work or duties of an employee and any necessary accommodation; first aid and safety personnel when appropriate; government officials; insurance companies as may be necessary to provide health or life insurance to employees; by court order or as otherwise legally mandated; and as necessary to protect the interests of the City.

7.8.3 Controlled Substance and Alcohol Testing For Employees Subject to Department of Transportation Regulations

City employees who drive a commercial motor vehicle (CMV) requiring a Commercial Driver's License (CDL) as part of their job duties are subject to alcohol and drug testing as required by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration and as outlined in this policy. The employee's supervisor and Department Head will advise the employee if he is subject to DOT testing and the terms of this policy. Applicants for employment for a position requiring a CDL are also subject to testing under this policy.

Employees covered by this policy are also required to comply with the City's Drug and Alcohol Use policy. This policy is in addition to, and not in lieu of, the provisions of the City's general Drug and Alcohol Use policy. DOT testing will be completely separate from non-DOT tests in all respects. DOT tests take priority and will be conducted and completed before a non-DOT test is begun. All drug and alcohol testing performed under this policy will comply with applicable DOT procedures. If this policy conflicts with DOT regulations in any way, the DOT regulations will govern.

An employee subject to the provisions of this policy may be a person employed by the City, a contractor engaged by the City or an employee of such contractor. Those employees who are subject to the testing provisions of this policy may change as job responsibilities change or as new jobs are added to the City's work force. Employees who hold these jobs are required to carry their CDLs when they are at work or are operating City equipment.

7.8.3.1 Prohibited Alcohol Use.

A. On-Duty and Pre-Duty Use. Reporting for, or remaining on, duty requiring the performance of safety-sensitive functions is prohibited under the following conditions:

- while having a breath alcohol concentration of 0.01 or more as indicated via breath test;
- while using alcohol; or
- within four hours after using alcohol.

B. Use Following an Accident/Injury. An employee required to take a post-accident/injury alcohol test pursuant to this policy is prohibited from using alcohol for eight hours following the accident/injury, or until undergoing a post-accident/injury alcohol test, whichever occurs first.

C. Prohibited Drug Use. Illicit use of drugs by safety-sensitive drivers is prohibited both on and off duty. An employee may not report for duty or remain on duty when he uses any controlled substances, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect his ability to safely operate a commercial motor vehicle (CMV). An employee may not report for duty, remain on duty or perform a safety sensitive function if the employee tests positive for controlled substances or has adulterated or substituted a test specimen.

D.Required Alcohol and Drug Tests. DOT requires the following testing for covered drivers: pre-employment, post-accident, random, reasonable suspicion, return to duty, and follow-up testing. Before conducting any required DOT testing, the City will notify the driver that the alcohol or drug test is required by DOT regulations.

1. **Pre-Employment Testing.** All drug and alcohol tests will be conducted after a conditional offer of employment is made, but before actually performing safety sensitive functions for the first time. These tests are also required when employees are promoted, demoted or transferred into a safety sensitive driver position.
2. **Post-Accident Testing.** Drug and alcohol tests will be conducted after accidents in which the driver's performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation. Post-accident testing must be conducted as soon as practical on all surviving drivers following an occurrence involving a CMV operating on a public road in commerce, as follows:
 - i. when the employee is issued a moving traffic violation citation and one or more of the vehicles involved is disabled and must be towed from the scene;
 - ii. when the employee is issued a moving traffic violation citation and any person involved in the accident is injured to the extent that he requires and receives immediate medical treatment away from the scene of the accident; or
 - iii. In an accident involving a fatality, testing will be performed on anyone who was performing safety-sensitive functions with respect to the vehicle.
3. An employee subject to post-accident testing must remain readily available for such testing or will be deemed by the City to have refused to test.

Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

In post-accident situations, the City may substitute a saliva, blood, or breath alcohol test for a urine drug test, so long as the test is performed by state or local law enforcement officials using procedures required by their jurisdictions, provided such test results are received directly from the local jurisdiction or the driver. A positive post-accident test administered by law enforcement will result in the same action as a positive post-accident test performed at the City's behest.

4. **Post-Accident Alcohol Testing.** If alcohol testing cannot be administered within two hours of one of the above listed occurrences, a written statement explaining why the alcohol test was not promptly administered must be provided to the Human Resources Manager/Civil Service Director by the appropriate supervisor. If alcohol testing cannot be administered within eight hours after the occurrence, the City will cease attempts to administer an alcohol test and document the reasons the alcohol test was not administered. This report must be promptly forwarded to the Human Resources Manager/Civil Service Director.
5. **Post-Accident Drug Testing.** A driver will be drug tested as soon as practical but not later than 32 hours after one of the above listed occurrences. If the driver is not drug tested within 32 hours, the appropriate supervisor must prepare a report documenting the reason why and promptly forward the report to the Human Resources Manager/Civil Service Director.
6. **Reasonable Suspicion Testing.** Reasonable suspicion drug and alcohol testing is conducted when a trained supervisor has reason to believe that an employee is in violation of this policy. The reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations may also include indications of the chronic and withdrawal effects of controlled substances. The supervisor must consult with the Department Head (or designee) and affirm the basis of his/her suspicion. If the Department Head concurs, he may order the employee to undergo testing only after consultation with the Human Resources Manager/Civil Service Director. A written report of the reasonable suspicion observations must be prepared by the supervisor(s) who made the observation within 24 hours of the observed behavior or before the results of tests are released, whichever is earlier. This report must be promptly forwarded to the Human Resources Manager/Civil Service Director.
7. **Reasonable Suspicion Alcohol Testing.** Reasonable suspicion alcohol testing is permitted only if the reasonable suspicion observation is made during, just before, or just after, the period of the work day the employee is required to be in compliance with this policy. An employee may be directed to undergo reasonable suspicion testing only while the employee is performing, just before he is to perform, or just after he stopped performing, safety sensitive functions. If alcohol testing cannot be administered within two hours after the reasonable suspicion observation, a written statement that explains why the alcohol test was not promptly administered must be provided to the Human Resources Manager/Civil Service Director. If alcohol testing cannot be administered within eight hours after the observation, the City will cease attempts to administer an alcohol test and the appropriate supervisor must immediately document the reasons that the alcohol test was not administered. This report must be promptly forwarded to the Human Resources Manager/Civil Service Director.

Notwithstanding the absence of a reasonable suspicion alcohol test under this policy, an employee may not report for duty or remain on duty requiring the performance of safety sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and

performance indicators of alcohol misuse. In such instances, the employee will not be permitted to perform or continue to perform safety sensitive functions until:

- an alcohol test measures the employee's alcohol concentration at less than 0.01; or
 - 24 hours have elapsed since the reasonable suspicion observation was made.
8. **Reasonable Suspicion Drug Testing.** A driver will be drug tested as soon as practical but not later than 32 hours after the reasonable suspicion observation. If the driver is not drug tested within 32 hours, the appropriate supervisor must prepare a report documenting the reason why and promptly forward the report to the Director of Human Resources.
 9. **Suspicion of DWI** – In situations where an employee may have operated a vehicle or mobile equipment and the possibility exists that they may be charged with DWI, supervisors should immediately consult with their management
 10. **Random Testing.** Drivers are selected for random, unannounced drug and alcohol testing using a scientifically valid method, such as a random number table or a computer based random number generator that is matched with the employee's Social Security number, payroll identification number, or other comparable identifying numbers. Each driver subject to this policy will have an equal chance of being tested each time random selections are made.

The number of drivers randomly selected will be in accordance with applicable DOT regulations. Each driver randomly selected for testing will be tested during the selection period. Dates and times for random testing are unannounced and spread reasonably throughout the calendar year. Each driver selected for random testing must proceed to the test site immediately after notification. If, however, the driver is performing a safety sensitive function, other than driving a CMV, at the time of notification, the City will instead ensure that the driver ceases to perform the safety sensitive function and proceeds to the testing site as soon as possible. A driver will be randomly tested for alcohol just before, during, or just after performing, safety sensitive functions. Random testing for drugs does not have to be conducted in immediate time proximity to performing safety sensitive functions.

11. **Refusal to Test.** Refusal to take a breath and/or urine test is grounds for discipline, including termination.
Refusal to take a drug test will be considered an automatic positive as well.

In no event will an employee who refuses breath or any other substance abuse testing be scheduled for work.

Except in the case of pre-employment testing, a refusal to test includes the failure to appear for testing within a reasonable time, as well as failure to remain at the testing site until the testing process is complete. Failure to test also includes the failure to provide the required sample with no adequate medical explanation, and the failure to cooperate with any part of the testing process (e.g., refusing to empty pockets when asked to do so, behaving in a confrontational way that disrupts the collection process, or failure to undergo a

medical exam or evaluation as directed as part of the verification process)

12. **Consequences of a Positive Alcohol Test.** An employee who is tested and has an alcohol concentration of 0.01 or greater will be disciplined and may be terminated. An employee who is tested and has an alcohol concentration of 0.01 to 0.039 will not be permitted to perform safety sensitive functions for a minimum of 24 hours and will be disciplined, up to and including termination. If the employee is not terminated, he will receive a mandatory referral to a substance abuse professional. Any non-compliance with the treatment recommendations of the substance abuse professional will result in disciplinary action, up to and including termination.

The employee will be placed on administrative leave without pay during the treatment period. In certain circumstances, and with the approval of the Department Head and the Human Resources Manager/Civil Service Director, the employee may be allowed to use sick leave during the treatment period.

13. **Alcohol Testing Procedures.** A trained breath alcohol technician will conduct alcohol tests. If the alcohol concentration is 0.01 or greater, a second confirmation test will be conducted in accordance with DOT regulations, the results of which will determine any actions taken. Any result of less than 0.01 alcohol concentration is considered a “negative” test. The second, confirmation test results determine if the employee is in violation of this policy. Testing procedures that ensure accuracy, reliability and confidentiality of test results will be follow pursuant to DOT regulations.

13. **Drug Testing Procedures.** Drug testing is conducted by analyzing a driver’s saliva or urine specimen at a lab certified by the U.S. Department of Health and Human Services. The driver provides a specimen in a location that affords privacy and the “collector” seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug testing lab. “Split” urine specimens provide drivers with an opportunity for a second test, if needed. If the driver challenges the validity of the test, he/she has 72 hours to request that the split specimen be sent for testing to another certified lab approved by the City’s Human Resources Manager/Civil Service Director. The second test will be at the driver’s own expense.

14. **Drugs Tested For.** The Department of Transportation requires testing for the following drugs:

- Marijuana (THC)
- Cocaine
- Amphetamines

- Opiates
- Phencyclidine (PCP)

A screening test is performed first. If this test is positive for one or more of these drugs, a confirmation test is performed. Whenever the terms “drug,” “drugs,” or “controlled substances” are used in this policy, they refer to the substances listed above. The City will not test for any other substances under this policy. The City may, however, test for other controlled substances pursuant to its general Drug and Alcohol Use Policy.

15. **Review of Drug Test Results.** All drug test results are reviewed and interpreted by a physician medical review officer (MRO) before they are reported to the City. If the lab reports a positive result to the MRO, the MRO will contact the driver, either in person or by telephone, and will conduct an interview to determine if there is an alternative medical explanation for the drug(s) found in the driver’s urine specimen. If the driver provides appropriate documentation and the MRO determines that it is a legitimate medical use of the prohibited drug(s), the drug test result is reported as a negative to the City.

E. Consequences of a Positive Drug Test. A driver will be removed from safety sensitive duties and placed on administrative leave if he/she tests positive for drugs. The removal cannot take place until the MRO has interviewed the driver and determined that the positive test resulted from the unauthorized use of a controlled substance. A confirmed positive drug test will result in termination of the employee.

F. Confidentiality. Test results may be released only to the driver, designated City officials, a substance abuse professional, laboratory officials or a medical review officer. Records will also be made available to a subsequent employer or other identified person upon the driver’s specific written request. Test results will not be released to others except as required by law or expressly authorized in the applicable DOT regulations (e.g., the decision maker in a lawsuit, appeal or administrative proceeding initiated by or on behalf of the driver and arising from a positive DOT drug or alcohol test or refusal to test. This includes workers’ compensation and unemployment proceedings.)

All test results will be kept in a confidential file maintained by the Human Resources Manager/Civil Service Director. Management and supervisory personnel who are authorized to have access to alcohol and drug testing results must maintain complete confidentiality regarding this information. City employees who have a reasonable suspicion observation or who witness an accident must also maintain confidentiality. Breach of confidentiality relating to test results, or any other related matters will likely result in disciplinary action, up to and including termination of employment.

G. Information from Prior Employers. For new hires, promotions and transferred employee drivers seeking to perform safety sensitive functions for the first time, the City is required, with the driver’s written consent, to obtain information from previous employers

regarding alcohol test results of 0.01 or greater, verified positive drug test results, refusals to test (including verified adulterated or substituted drug test results), and any other violation of DOT drug and alcohol testing regulations within the two years prior to the date of the driver's application, promotion, or transfer.

Affected individuals must sign a Breath Alcohol and Drug Testing Results Request. The City will obtain and review the information before allowing the person to perform safety sensitive functions. If the City receives any such information about an applicant driver, the applicant will not be hired. If such information is received about an employee seeking promotion or transfer, the employee will not be promoted or transferred to the driver position and may also receive disciplinary action, up to and including termination of employment.

The City will maintain a written, confidential record of the information it obtains and/or the good faith efforts it made to obtain the information. This information will be retained for a minimum of three years. The City will also ask the person if he/she has tested positive or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the driver applied for, but did not obtain, safety sensitive transportation work covered by a DOT agency drug and alcohol testing rules during the past two years. If the person admits to such conduct, the person will not be allowed to perform safety sensitive functions for the City. If the driver refuses to provide the City with the required written consent, the driver will not be permitted to perform safety sensitive functions and will likely be disciplined (up to and including termination of employment) if employed, or not hired if applying for employment.

H. Record Retention. The City will maintain and retain records under this policy as mandated by DOT regulations.

I. Notification of Applicants/Employees of Positive Test Results. The City will notify applicants of the results of a pre-employment drug test if the applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The City will notify an employee of the results of random, reasonable suspicion, and post-accident drug tests if the test results are verified positive, and also which controlled substance(s) verified positive. The City will also make reasonable efforts to contact and request each driver who tested positive to contact and discuss the results of their drug test with a MRO who has been unable to contact the driver. The City will immediately notify the MRO that the driver has been notified to contact the MRO within 72 hours.

J. Employee Admission of Drug/Alcohol Use. An employee who admits to alcohol misuse or drug use must do so in accordance with the City's general Drug and Alcohol Use policy; provided the employee may not self-identify in order to avoid the testing requirements of this DOT policy. Further the employee must make the admission prior to performing a safety sensitive function, i.e., prior to reporting for duty. The employee may not perform a safety sensitive function until the City is satisfied that the employee has been evaluated and has successfully completed educational or treatment requirements in accordance with the City's general Drug and Alcohol Use policy. A drug and alcohol abuse evaluation expert, i.e., an EAP professional, a substance abuse professional or a qualified drug and alcohol counselor, will determine successful completion. Prior to the employee performing safety sensitive functions, the employee must undergo a return to duty alcohol

test with a result of less than 0.02 and/or a return to duty drug test with a negative test result.

K. Safety Sensitive Functions. For purposes of this policy, safety sensitive function or duty means all the time, from the time a driver begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. Safety sensitive functions/duties include:

- a. All time at a City facility or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City;
- b. All time inspecting equipment as required by applicable DOT regulations or otherwise inspecting, servicing, or conditioning any CMV at any time;
- c. All time spent at the driving controls of a CMV in operation;
- d. All time, other than driving time, in or upon any CMV;
- e. All time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

L. Transportation to Testing Site. With the exception of pre-employment testing, employees will be driven to the testing facility by a supervisor. The supervisor will remain with the employee during the testing process. The City will make arrangements to have the employee transported back to the City or home, as appropriate, after the testing is complete.

M. Questions Regarding This Policy. Any questions regarding this policy should be addressed to the Human Resources Manager/Civil Service Director.

7.9 RETURN TO WORK REQUIREMENTS

After an employee has had a first occurrence positive drug/alcohol test, except as otherwise provided in these rules, he/she will be suspended for up to five (5) work days (forty(40) hours). With the approval of the department head, and depending upon the substance consumed, the employee may remain off up to 20 work days to assure a clean drug screen when returning to work. The employee should be advised that a second drug test will result in termination.

Before returning to work the employee **MUST** complete the following:

- A. Take, pay for, and pass a return to work drug test. This must be done at an HR approved provider. Drug tests from any provider that has not been approved by HR will not be accepted.
- B. If the employee's return to work drug test is positive for drugs or alcohol, he/she will be terminated.

- C. If the employee does not complete the return to work drug test within five (5) day (forty(40) hours) suspension, he/she will remain unpaid status until complete
- D. In no event will an employee be allowed to remain off duty and away from work for longer than twenty (20) work days (one hundred sixty (160) hours) starting from the first day of suspension. If the employee has not successfully completed his/her return to work test within the twenty (20) work days (one hundred sixty (160) hours), he/she will be considered to have abandoned his/her job and will be terminated accordingly.

7.10 TOBACCO RESTRICTIONS

7.10.1 Tobacco in Designated Areas Only. It is the policy of the City of Marshall that a tobacco-free environment shall be provided in all City-operated facilities, except for designated smoking areas in accordance with city ordinance. The use of tobacco products is strictly limited to designated areas. It is anticipated that employees wishing to use tobacco products shall do so outdoors during those breaks normally provided by departmental policy or procedure. No employee will be provided additional break time as a result of this policy.

7.10.2 Designated Tobacco Areas

- A. Tobacco and or the use of tobacco products is not allowed in City vehicles. City vehicles are defined as any motorized equipment owned by the City, including such items as trucks, heavy equipment, and all automobiles.
- B. Department Directors shall designate an outdoor tobacco area for each department facility and specify that the indoor facilities are non-smoking/non-tobacco use in accordance with city ordinance.
- C. At no time will smoking be allowed around or within a hazardous range of flammable liquids or highly volatile substances.

7.10.3 Enforcement

- A. All employees are charged with informing members of the public of the details of this policy. An employee who observes a member of the public using tobacco in a City building or vehicle should politely inform the citizen that tobacco is prohibited, except in designated outdoor areas.
- B. All supervisors are charged with informing their employees of the details of this policy. A supervisor who observes an employee using tobacco in a City building or vehicle, except in designated outdoor areas, should ask them to refrain from using tobacco.
- C. Willful or repeated violations of this policy will result in appropriate disciplinary actions.

7.11 DRIVER SAFETY & VEHICLE OPERATION

1. The City defines a vehicle as any passenger car, truck, motorized equipment (see following section), or similar type as defined by the Texas Motor Vehicle Law which is owned, leased, rented, or otherwise under the care, custody, or control of the City of Marshall including police and fire vehicles.
2. Motorized equipment includes, but is not limited to golf carts, backhoes, bulldozers, mowers, tractors, loaders, graders, and similar equipment.
3. To operate any City Vehicle, or any other motor vehicle in the course of City business, an employee must:
 - a. Have a valid Driver License for the class of vehicle to be driven;
 - b. Have a record of no more than three moving violations and/ or chargeable accidents within a 24-month period;
 - c. Have no record of DWI or DUI convictions in the preceding 24 month period;
 - d. Be at least 18 years old; and
 - e. Be otherwise qualified under federal and state regulations to drive the vehicle in question.
4. Driving records of employees who operate motor vehicles in the course of City business will be examined on an annual basis by Human Resources
5. Driver Training: Supervisors may require employees who demonstrate questionable driving capabilities, habits or are involved in a preventable accident to attend driver training.
6. Citations: Employees are responsible for paying any violation(s) fines out of the employee's personal funds for traffic citations received while operating a City vehicle.
7. Employees who operate motor vehicles in the course and scope of their employment must notify their supervisor:
 - a. When their driver's license becomes invalid or suspended for any reason. Such employees will immediately be prohibited from the operating any vehicles on City business.
 - b. Immediately during regular working hours (or by the next working day if after hours) when any ticket or citation for any moving violation of state law or a local ordinance is received. This notice must be in writing and include:
 - i. Driver's full name and license number;
 - ii. Date of the incident;
 - iii. Nature of the violation;
 - iv. Whether or not the violation was committed in a commercial vehicle; and
 - v. Location of the offense
8. An employee shall operate any vehicle used for City business in a careful and prudent manner and shall obey the laws, policies, regulations, and procedures of the state, City and any political subdivision pertaining to such operation. An employee's operation of a vehicle shall, at all times, set a proper example for other reasons.
9. Requirements for use of Personal Vehicles on City Business: Any employee using a personal vehicle on City business shall be required to maintain auto liability insurance of at least the minimum required by state law.
10. As required by law, passenger restraint systems must be worn by the driver and passenger when a vehicle is in operation. The driver is responsible for ensuring compliance by all occupants. If the restraint system is inoperable, the vehicle cannot be used until it is repaired.
11. There is to be no use of cell phones while operating a City vehicle. Any phone calls that must be taken MUST BE hands-free.
12. There are to be no unauthorized passengers in City vehicles. This would include but not limited to family members, non-City employees or contractors.

7.12 SOLICIATATIONS

7.12.1 Among Employees. Solicitation of contributions for charitable events and causes among employees is permitted. However, such solicitations are subject to the restrictions set out below.

- a) All solicitations must clearly state the purpose for which the contribution is being requested, including the name of the organization to which the contributions will be distributed.
- b) All solicitations must clearly state the name of the employee accepting contributions on behalf of the organization.
- c) Direct contact should be kept at a minimum, so as not to interfere with the work of the City or cause annoyance to fellow employees.

7.12.2 Political Campaigns. Solicitation of contributions for political campaigns, whether in support of or against an individual or an issue, is prohibited in the workplace. General announcements of political events are allowed, with the prior approval of the City Manager. *See section 7.4 of these policies for restrictions on political conduct in the workplace or while in City uniform and the use of City equipment in conducting political activities.*

7.12.3 By Employees Outside the Workplace

- a) There is no restriction on the solicitation of contributions for charitable events and causes by any employee outside the workplace, as long as the employee does not identify himself or herself as a City employee and does not make any representation that the solicitation is supported by the City.
- b) Solicitations by employees outside the workplace for contributions for or against political candidates or issues is governed by state statute. However, under no circumstances may an employee represent himself or herself as a City employee in the course of such solicitation or represent that the candidate or issue is supported or opposed by the City.
- c) With the advance approval of the City Manager, City employees may solicit contributions for charitable events and causes outside the workplace while identifying themselves as City employees (i.e., while in uniform), subject to the following:
 - 1. The solicitation is approved in advance by the City Manager.
 - 2. The solicitation is a joint effort of the employees of at least one or more departments.
 - 3. Any printed information, or oral communications, used during the solicitation indicates that the solicitation activity is being conducted by City employees for a stated organization and no indication is given that the City is supporting that organization.
 - 4. The solicitation is in compliance with all applicable ordinances, statutes and regulations.
 - 5. The solicitation will not damage the image of the City, result in undue controversy, create any conflict of interest, or violate any local, state or federal regulation or statute.

7.13 EMPLOYEE ARREST

7.13.1 General. In the case of the arrest of a City employee, the following procedures should be followed:

- a) An employee must inform their supervisor of any arrest within 24 hours of the event.
- b) Notification of the arrest and/or offense report shall be made by the supervisor or director to the Human Resources Manager/Civil Service Director, who will notify the City Manager and City Attorney.
- c) If an employee fails to contact their immediate supervisor, they will be subject to disciplinary action up to and including termination.

7.14 DISCIPLINARY ACTION

7.14.1 General. It is important for employees to know what personal conduct is expected of them while on the job. In most instances, an employee's own good judgment will tell the employee the right thing to do. However, employees should know what specific rules must be followed, since violation of these rules may result in discharge of an employee from employment.

While the majority of City employees consistently do a good job, there are times when some employees will perform at an unsatisfactory level, violate a City policy or work rule, or engage in conduct which is inappropriate for or at work. To effectively address and resolve such problems, disciplinary action may be appropriate. Disciplinary actions with respect to all positions in the City service under the jurisdiction of the City Manager shall be by action of the City Manager or as the City Manager has authorized the Human Resources Manager/Civil Service Director or a department director to take such action, or as provided by the Texas Local Government Code.

7.14.2 Reasons for Disciplinary Action

- A. **General.** An employee may be subject to disciplinary action for failure to observe work rules, administrative or department policies, or for poor performance, work habits, attitude or personal conduct in the workplace. An employee may be subject to disciplinary action for activities occurring outside the workplace when such activities could compromise the image of the City with the public, adversely affect the City workplace, or adversely affect the ability of the employee to perform the functions of his or her position.
- B. **Major Causes for Discipline.** Types of behavior and conduct that the City considers inappropriate and which could lead to disciplinary action up to and including discharge from employment without prior warning at the sole discretion of the City include, but are not limited to, the following:
 - 1. Unsatisfactory, incompetent, or inefficient performance,
 - 2. Gross negligence in the performance of duty,
 - 3. Unsafe work activity,

4. Disorderly or disruptive conduct on the work premises,
5. Intentional or negligent damage to City property,
6. Discourteous, offensive, or abusive attitude, language or conduct, to the public or to fellow employees while in the line of duty,
7. Coercion, intimidation, or threats against citizens, supervisors, coworkers, or City officials,
8. Gossip, or making or publishing, false, vicious, or malicious statements about the City, or a coworker, supervisor, or member of management;
9. Unauthorized disclosure of confidential information,
10. Waste, theft, conversion, misuse or misappropriation of City property, whether on or off duty,
11. Insubordination,
12. Engaging in any act or conduct showing a lack of good moral character or conduct unbecoming of a City employee or City, including off-duty actions or involvements which are damaging to the City's reputation or business this includes social media;
13. Violation of the City's policies and procedures regarding use of drugs or alcohol or tobacco,
14. Violation of the City's policies regarding discrimination, harassment and/or workplace violence,
15. Hindering departmental operations because of habitual tardiness or excessive absenteeism,
16. Violation of any Charter, administrative directive or special order, departmental rule, or City policy,
17. Falsifying, misrepresenting, or providing false information for, any City record, including an application for employment,
18. Violation of the City's policies regarding outside employment, conflicts of interest, nepotism, political activity, or use of electronic media,
19. Conviction of a criminal offense, including moral turpitude,
20. Failure to achieve or maintain job standards such as required license or certification, etc.,
21. Permanent or chronic physical or mental ailment or defect that renders employee incapacitated for the performance of their duties, subject to the City's compliance with State and Federal Law concerning disability,
22. Any other conduct or action which makes continued employment inappropriate, or
23. As otherwise stated for those governed by state and local government codes.
24. Failing to follow the Chain of Command

7.14.3 Types of Disciplinary Action

- A. **General.** The following is a list of steps that supervisors may follow in administering disciplinary action. These steps are guidelines only and may not always be followed. Disciplinary action may be initiated at any step in this process, at the City's discretion, depending on the performance problem, the type of conduct, the nature of the offense involved, and the employee's employment history with the City. The implementation of this policy should not be construed as preventing, limiting, or delaying the City from taking disciplinary action, including immediate discharge, without prior warning or notice, in circumstances where the City deems such action appropriate.

- B. **Oral Communication.** Whenever a supervisor observes or receives a complaint regarding an employee violating a work rule, or becomes aware of poor performance, work habits, attitude or personal conduct in the workplace, the supervisor may discuss the violation or poor performance, work habits, attitude or personal conduct in the workplace with the employee and give the employee counsel and assistance on avoiding further violations or correcting the poor performance. Corrections and suggestions should be made in a constructive and helpful manner. The supervisor should make a written note of the discussion for future reference. This note shall be filed in the employee's personnel file maintained by Human Resources.

- C. **Written Reprimand**
 1. Whenever an employee's failure to observe work rules or poor performance, work habits, attitude or personal conduct in the workplace is repeated or material, the employee's supervisor shall meet with the employee, explain the nature of the employee's failure to observe work rules or poor performance, work habits, attitude or personal conduct in the workplace, and direct the employee as to what steps the employee must take to abide by the work rules or improve his or her poor performance. The nature of the violation of work rules or poor performance, work habits, attitude or personal conduct in the workplace, and the directions for correction, shall be reduced to a written corrective action report which must be signed by the supervisor and the department director. The employee shall be given a copy, and asked to sign acknowledging receipt. This written corrective action report shall become a part of the employee's personnel file.

 2. The employee shall be given an opportunity to add his/her words of explanation to the written corrective action report before it is placed in the employee's personnel file.

 3. The written corrective action report shall document any prior oral communications with the employee involving related violations of work rules or poor performance, work habits, attitude, or personal conduct in the workplace.

 4. In circumstances involving poor performance, work habits, attitude or personal conduct in the workplace, the employee shall be given a review date when the employee's performance will be reviewed for improvement.

 5. The written corrective action report shall state that failure to improve may result in further disciplinary action.

6. Civil Service Personnel should refer to state and local government regulations.

- D. **Suspension without Pay.** Whenever an employee commits one of the offenses set out in 7.11.7 paragraph B., or violates the conditions of a written reprimand, or has had prior disciplinary or corrective measures, or repeats conduct which has been the subject of prior disciplinary action, an employee may be ordered off work for no more than ten (10) work days/shifts without pay. The number of days of suspension shall be related to the seriousness of the conduct which is the subject of disciplinary action.

Should the absence of an employee cause departmental operations to suffer, the department director may utilize equivalent alternate forms of discipline such as reduction in vacation leave time equivalent to the number of days suspended, or a temporary reduction in pay in lieu of suspension without pay. The advantage of exercising these options rather than the suspension without pay option is that the employee is required to be at work; therefore, the work group does not suffer because of the employee's absence. Also, the employee's pay is impacted with the hope that the employee will realize the severity of the problem. If an employee's rate of pay is reduced 10% for one pay period, this is equivalent to one day without pay. Likewise, if an employee's rate of pay is reduced 5%, this reduction in pay for two pay periods is equivalent to one day without pay. Therefore, if a supervisor believes a three-day suspension without pay is in order, the supervisor may reduce an employee's rate of pay 10% for three pay periods or 5% for six pay periods.

A recurrence of an offense similar to the one for which an employee has been suspended and occurs within one (1) year of the first offense may constitute grounds for dismissal.

Civil Service personnel are subject to the provisions of State and Local Government Code. Exempt employee suspensions shall be made in accordance with the Fair Labor Standards Act.

- E. **Decision-Making Leave (DML).** Decision-Making Leave (DML) is appropriate after previous attempts have not corrected the problem and the employee violates the same rule or commits the same offense. DMLs are also appropriate for first offenses of a serious nature, such as insubordination or dishonesty, when the circumstances surrounding the incident do not necessarily justify termination.
1. The immediate supervisor, with advice and counsel of intervening levels of supervision and Human Resources, assembles all documentation and records leading to and supporting the application of DML. A discussion with the employee is conducted by the supervisor, division manager and/or department director, where the employee's overall work record, performance, attendance, and conduct problems are reviewed.
 2. This discussion is followed by the employee being placed on a one-day DML day with pay the following workday (shift), in order for the employee to decide whether he wishes to continue his employment with the City. A letter that outlines the following will be given to the employee, who will provide his signature to acknowledge receipt:
 - i. Cause for the action, including the date, time, and place the infraction occurred;
 - ii. Rules, policies, or procedures violated;

- iii. Previous related disciplinary action, if any;
 - iv. Date the DML is to be taken;
 - v. Who this decision may be appealed to and the time limit.
 - 3. The employee will report his decision the next workday (shift) after the DML. This will be in the form of a letter of resignation or the workings of a written performance improvement plan. If the employee decides to continue employment with the City, the supervisor and department director will discuss the employee's plans to make needed performance improvements. The employee may be placed on probation for up to 12 months, during which time if he does not live up to this recommitment and meet all job requirements, termination may result. The employee will be given a letter signed by the department director and employee summarizing the DML discussion and the employee's decision.
 - 4. The supervisor shall follow-up and counsel the employee as a means to reinforce expected performance. This should occur at the following intervals:
 - i. One month after the DML
 - ii. Six months after the DML
 - iii. One month prior to the 12-month period following the DML
- F. **Disciplinary Demotion.** Whenever an employee commits one of the offenses set out in 7.11.7 paragraph B, or has been suspended, returned to active employment and once again faces disciplinary action, or has violated the conditions of a written reprimand, the employee may be demoted to a lower job classification.

G. Discharge

- 1. **General.** Employees may be dismissed with or without cause and may not be considered as eligible for rehire.
- 2. **For Cause.** An employee may be discharged for cause whenever the employee: (a) commits one of the offenses set out in 7.11.7 paragraph B.; (b) has violated the conditions of a written reprimand; or (c) has been suspended and returned to active duty, or demoted, and once again faces disciplinary action. Dismissal of an employee for cause will be justification to deny future employment with the City.
- 3. **Without Cause.** An employee may be discharged without cause when the City Manager deems the discharge of the employee to be in the best interests of the City.

Appeal. All employees shall have the right to appeal any disciplinary action in accordance with the procedures established for resolving complaints in Section 8 of this document, or as outlined in the State and Local Government Codes.

7.15 WORKPLACE VIOLENCE

The City of Marshall is committed to preventing workplace violence and to maintain a safe work environment for its employees. As preventive measures, the City of Marshall has adopted the following executive order to address workplace and domestic violence which may be displayed

through intimidation, harassment, or threats which may occur on City property during working hours.

The City of Marshall realizes workplace violence and domestic violence in the workplace may cause detrimental and/or devastating effects on management and its employees. It is therefore the policy of the City that workplace violence will not be tolerated and shall be reported immediately. Employee conduct which violates these standards will not be tolerated. "Workplace Violence" may include acts that result in damage to city resources. Workplace harassment and bullying may include forms of workplace violence. Domestic violence that spills over into the workplace in the form of assaults, threats, or other actions by outside parties with whom employees have a relationship and that occur at the workplace. In addition to a potential loss of human resources, the fear of workplace violence can affect morale, productivity, and attendance. Workplace violence increases hostilities, increases cost to the City and its citizens, and tarnishes the public service image of City government.

7.16 Weapons Policy

Employees are prohibited from carrying personal handguns, firearms and other weapons onto City property or in City vehicles or City buildings unless carrying of weapons is considered part of the employee's job. Violation of this policy may result in disciplinary action up to and including termination.

8 - CONFLICT/COMPLAINT RESOLUTION PROCESS

8.1 GENERAL. The most effective accomplishment of the work of the City requires prompt consideration and equitable treatment of employee complaints. The City hereby establishes these procedures for resolving complaints. In the event that an administrative investigation has been initiated involving the employee or relevant conduct, the issues raised will be referred to the administrative investigator for fact finding purposes. The procedures outlined herein shall be abated pending that investigative report.

8.2 MATTERS SUBJECT TO THIS POLICY. Any employee who encounters a problem in the workplace involving the conduct of another employee (except conduct constituting harassment), work conditions, the interpretation or application of department rules, interpretation of these personnel policies, and/or disciplinary action may submit the matter to resolution through these procedures. Complaints may not be submitted in the abstract but must relate to actual facts involving the employee in situations which have resulted in adverse action against the employee or had an adverse impact on the employee.

If an employee's problem or concern relates to harassment under the City's Equal Employment Opportunity policy, the employee should follow the procedures included in Section 2.2 of these policies for reporting concerns or problems.

If an employee's problem or concern relates to the City's health insurance plan(s), life insurance plan, cafeteria plan, or retirement plan(s), each such plan has its own procedure to address complaints to the plan administrators, and the employee must follow the applicable procedure rather than those contained in these Personnel Policies.

Where applicable the rules outlined in the state and local government code shall be applied. Civil Service employees may not appeal through this process.

8.3 COMPLAINT RESOLUTION PROCEDURE. Misunderstandings or conflicts can arise in any organization. To ensure effective working relations, it is important that such matters be resolved before serious problems develop. Most incidents resolve themselves naturally; however, if a situation persists that an employee believes is detrimental to the employee or to the City, the employee should follow the procedure described here for bringing his/her complaint to management's attention.

Step 1.

Discussing the problem with the employee's immediate supervisor is encouraged as a first step. If, however, the employee does not believe a discussion with his/her supervisor is appropriate, the employee may proceed directly to Step 2. If the employee brings the problem to his/her supervisor's attention and the problem is not resolved, the employee may proceed to Step 2.

Step 2.

If an employee's problem is not resolved after discussion with his/her supervisor or if an employee feels discussion with his/her supervisor is inappropriate, the employee is encouraged to request a meeting with his or her department director. The employee shall prepare a written summary of his/her concerns and with a proposed resolution. In an effort to resolve the problem, the department director will consider the facts, conduct an investigation, and may also review the matter with the Human Resources Manager/Civil Service Director. An employee will normally receive a response regarding the problem within five (5) working days of meeting with the department director.

Step 3.

If an employee is not satisfied with his/her department director's decision and wishes to pursue the problem or complaint further, the employee shall request that the matter be reviewed by Human Resources. Human Resources may either refer the matter to another member of management for consideration, who after a full examination of the facts (which may include a review of the written summary of the employee's statement, discussions with all individuals concerned, and further investigation if necessary), will make a recommendation to the City Manager regarding resolution of the problem, or conduct his/her own investigation.

The Human Resource Manager will normally advise the employee of the City Manager's decision within fifteen (15) business days of the employee's written request for review. The decision of the City Manager shall be final.

8.4 RETALIATION PROHIBITED.

The City does not tolerate any form of retaliation against employees availing themselves of this procedure. The procedure should not be construed, however, as preventing, limiting, or delaying the City from taking disciplinary action against any individual, up to and including discharge, in circumstances (such as those involving problems of overall performance, conduct, attitude, or demeanor) where the City deems disciplinary action appropriate.

8.5 EMPLOYEE REPRESENTATIVES.

An employee may have one (1) other employee present with him/her, for observation purposes, during meetings with management to discuss a complaint against that employee. Employee representatives do not have the right to interject themselves into the conversation, nor the right to direct the intended employee on how to answer questions.

8.6 TEXAS WHISTLEBLOWER ACT

Protects public employees who make good faith reports of violations of law by their employer to an appropriate law enforcement authority. An employer may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who makes a report under the Act.

9 - NON-DISCIPLINARY SEPERATION

9.1 LAYOFF

- 9.1.1 General.** A department director, upon approval of the City Manager, may suspend or discharge the service of an employee due to a lack of funds, curtailment of work, the abolition of the position or other material changes in the duties or organization, or for related reasons which are outside the employee's control and which do not reflect discredit upon the service of the employee.
- 9.1.2 Prior Notification.** When it becomes necessary for any regular full-time employee to be laid off, he/she shall be notified in writing at least two (2) weeks before the day of layoff.
- 9.1.3 Order of Layoff.** When appropriate, layoff of employees shall be made from the part-time, temporary, seasonal or emergency work force in the affected department prior to any reduction of full-time employees. Layoffs shall be determined by the department director based upon employee performance and department need.
- 9.1.4 Re-employment List.** Employees separated from the City service through layoff will be placed on a re-employment list in the order of length of service with the City. The eligibility of all candidates on the re-employment list will expire one (1) year from the date on which they are placed on the list.

9.2 VOLUNTARY SEPARATION FROM EMPLOYMENT

- 9.2.1 Resignation.** Employees may resign their employment at any time by submitting written notification to the department director at least two (2) weeks in advance. Failure to provide a two (2) week notice will be noted in an employee's file and may affect rehire eligibility. For harder to fill positions or more high profile roles, the City advises our employees to give at least a 45 day notice. Failure to provide a 45 day notice will be noted in an employee's file and may affect rehire eligibility.
- 9.2.2 Retirement.** Whenever an employee meets the retirement conditions for the applicable retirement system, the employee shall be eligible to retire and receive all benefits earned under the applicable retirement system. In order to receive payment of retirement benefits with no break in compensation, an employee planning to retire should notify Human Resources at least sixty (60) days prior to his or her projected retirement.

9.3 DEATH

The date of an employee's death will be considered his/her separation date. Any monies owed by the City to the employee at the time of the employee's death shall be paid to the employee's estate.

9.4 SEVERANCE PAY

Employees who separate from the City shall not be entitled to severance pay.

9.5 ACCRUED LEAVE TIME

Regular employees who separate from City service shall receive payment for all earned salary and accrued annual vacation leave (up to the maximum limit), subject to deductions for any indebtedness to the City. Regular employees who separate from City shall receive accrued sick leave that is in 5.3. Civil Service employees shall be paid for accrued leave as provided for in state and local government codes.

9.6 CITY PROPERTY IN POSSESSION OF EMPLOYEE

At the time of separation and prior to final payment of the employee's salary, all records, assets, and other items of City property in the employee's custody shall be transferred to the department director.

10 – COORINATION WITH OTHER LAWS & POLICIES

- 10.1** These personnel policies shall be administered in compliance with federal, state, and local laws related to employment. In the case of apparent conflicts between these policies, other policies, and applicable laws, the policy administrator shall make the appropriate rulings to resolve the potential conflicts, whenever possible.
- 10.2** In the event that any part of these policies is judicially determined to be in conflict with any law or to be in violation of any law or is rendered ineffective because of some state or federal legislative enactment, that part(s) shall be void, but the remainder of these policies shall remain in effect. Parts that are void or voided shall be replaced as soon as possible so as to maintain the full effect of these policies and/or to bring them into compliance with relevant laws.

DEFINITIONS

Alcoholic Beverage. Any beverage containing more than one-half of one percent of alcohol by volume which is capable of use for beverage purposes either alone or when diluted.

Alcohol testing. Testing for blood alcohol concentrations by blood, saliva, urine, breath tests or other appropriate means.

Anniversary Date. The date on which an employee first performed the duties of the employee's position. The anniversary date is used to calculate evaluation dates and step increase dates.

Business Unit. Each division within a department, wherein the nature of jobs within the division can function independently without being intertwined or closely dependent on jobs from another division.

City means the City of Marshall.

Commercial Motor Vehicle. Any motor vehicle other than a motorcycle, designed or used for the transportation of property, including every vehicle used for delivery purposes as defined in accordance with 49 USC § 31101, as amended.

Controlled Substance. Any drug or controlled substance for which the manufacture, distribution, possession, sale, or consumption of which is illegal, or a prescribed or over-the-counter drug which is legally obtained but not being used for its intended purpose, or a prescribed or over-the-counter substance which is legally obtained and used for its intended purpose but the use of which causes the employee to be impaired or in an unfit condition. The definition of controlled substance shall include, but is not to be limited to, all controlled substances, volatile chemicals, abused glues, aerosol paints, and marijuana as those terms are now or shall hereafter be defined in Title 6, Chapters 481-485 of the Texas Health and Safety Code, or any successor Code thereto.

Decision-Making Leave. A step in the disciplinary process. This leave is a one-day, paid leave wherein the employee must decide whether they want to continue working for the City, and upon return to work, must present their supervisor with a plan of action.

Department. A major functional unit of City government.

Department Director. Any person, employed by the City Manager with the consent of the City-Council, who is responsible for the administration of a department, as identified on the City organization chart.

Division. A functional unit of a department as identified on the City organization chart.

Drug testing. Testing for the presence of drugs or controlled substances in accordance with the procedures set forth in the Policy. Drug testing may be accomplished by any scientifically acceptable means and may include but is not limited to the collection of saliva or urine samples and laboratory analysis of samples.

Full-Time Employees. Employees, other than temporary or seasonal employees, who are regularly scheduled to work forty (40) or more hours a week in a calendar year, are considered full-time employees.

Hire Date. That date on which an employee first commences full-time employment with the City and appears for work. An employee's hire date is used to calculate an employee's entitlement to benefits such as leave time accrual and longevity.

Impaired. The employee's behavior or ability to work are adversely affected by a controlled substance, drug or alcohol, or the combination of them, in any manner.

Medical Review Officer. A licensed physician responsible for reviewing laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his medical history and any other biomedical information.

Military Leave. Any authorized absence of an employee for active or reserve duty training in the United States armed forces.

Part-Time Employees. Employees who are regularly scheduled to work fewer than forty (40) hours a week are considered part-time employees. Part-time employees receive no benefits and are not allowed to work more than 1,000 hours in a year.

On-Call. Employees assigned by supervisory personnel to respond to calls to duty after scheduled work hours. Employees are free to perform personal activities but are required to be fit to respond to work via pagers, phone, or radio.

Overtime. Those hours worked by non-exempt employees during any Fair Labor Standards Act-defined workweek which normally exceeds 40 hours specified for such workweek. (Overtime is defined separately for shift personnel within the Police and Fire Departments as per section 207(k) of the FLSA.)

Policy Administrator. The Human Resources Manager/Civil Service Director is the policy administrator under the direction of the City Manager.

Promotion. Promotion is the assumption of expanded duties in a new position and higher pay grade. In most cases, the employee will move to the A or B step of the new range, depending upon prior experience, certifications, etc.

Reasonable Suspicion. The belief that an employee has violated the alcohol or drug prohibitions, based on specific, contemporaneous observations concerning the appearance, behavior, speech, or odors of the employee.

Regular Employees. Regular employees are full-time or part-time employees who have been hired for an indefinite, continuing period of time and are not employed by a third party.

Safety-Sensitive Position. Employment positions which are safety-sensitive are those where an employee's impaired perception or judgment can impose a significant danger to the employee and others. These positions include those in which: the handling and possession of firearms is required; the immediate protection or defense of human life may be required; the provision of life-saving techniques and the administration of medical services or care is required; and the operation of emergency vehicles is required. Safety-sensitive positions include licensed peace officers, certified/licensed firefighters, drivers of authorized emergency vehicles (including police squad cars, fire trucks and apparatus, ambulances and mobile intensive care units), those who repair or perform maintenance on City vehicles, lifeguards, and those persons certified or licensed as emergency medical technicians and paramedics.

Supervisor. Any person, regardless of job title, who is responsible for directing the work of others.

Temporary or Seasonal Employees. Temporary or seasonal employees are those employees who have been hired on a temporary basis to fill a temporary need of the City, fill in for an employee on leave time, or to perform seasonal work.

**Acknowledgement of Receipt of
City of Marshall
Personnel Policies and Procedures Manual**

I acknowledge that I have received a copy of the City's Personnel Policy and understand that it contains important information on the City's general guidelines and on my privileges and obligations as an employee.

I understand that it is my responsibility to familiarize myself with the material in the policies and that I must comply with their provisions and any other policies or rules of the City.

I understand that my agreement to comply with these policies and provisions will be constituted by virtue of my continued employment with the city.

I further understand that the City may change, add to or delete any policies or provisions in the Personnel Policy from time to time, in its sole discretion, with or without prior notice.

I understand that the City's Personnel Policies are not intended as either an express or implied contract of employment between the City and any of its employees.

Date: _____

Signature: _____

Printed Name: _____

ITEM 9C

FINANCIAL UPDATE REGARDING WONDERLAND OF LIGHTS

M E M O R A N D U M

To: David Willard, Interim City Manager

From: Dawn Jones, Finance Director

Date: February 4, 2022

Subject: 2021 Wonderland of Lights Financial Update

A financial update regarding Wonderland of Lights will be presented during the council meeting.

ITEM 9D

**CONSIDER APPROVAL OF A
RECOMMENDATION FOR
APPOINTMENT TO THE PLANNING &
ZONING COMMISSION**

City of Marshall
Application for Appointment to City Boards and Committees

Name of Board or Committee to which you are applying: Planning and Zoning

Note: A person may serve on only two (2) City boards or committees at one time.

Name: Carter LaDarius D
(Title) (Last) (First) (Middle)

Permanent Residence Address: _____
(Street) (City) (State) (Zip Code)

Preferred Mailing Address: _____
(If different from above) (Street) (City) (State) (Zip Code)

Preferred Phone and Fax: _____
(Phone) (Fax)

Email Address: _____

Occupation: Realtor / Healthcare

Employer: Clay Allen / Marshall Hospice Title: Real Estate Agent / Chaplain

Are you a registered voter in the City of Marshall? ☒ Yes ☐ No

Are you a resident of the City of Marshall? ☒ Yes ☐ No

Length of residence: 19 yrs In which District do you reside? 4 + 6

Do you, your spouse or your employer have any financial interest, direct or indirect in any contract with the City of Marshall?

☐ Yes ☒ No

If Yes, please explain: N/A

Do you, your spouse or your employer have any financial interest, directly or indirectly, in the sale to the City of any land, materials, supplies or service?

☐ Yes ☒ No

If Yes, please explain: N/A

Do you, your spouse or your employer have any financial interest, directly or indirectly, in matters that might come before the Board or Committee to which you are seeking appointment?

☐ Yes ☒ No

If Yes, please explain: N/A

Convictions: Have you ever been convicted of violating any federal, state or municipal law, regulation or ordinance? ☐ Yes ☒ No

If so, give details. Do not include traffic violations. N/A

Continued on Page 2

City of Marshall Application for Appointment to City Boards and Committees (Page 2)

Name: LaDarius CarterBACKGROUND
Education: ETBU - B.A. - Mass Communication - 2010

Professional: _____

Volunteer Experience/Community Service: Previous City Commissioner / Various boards

Areas of interest: _____

Please specify membership on any other governmental Board or Committee.

List all Boards, Commissions, Corporations, Non-Profit Entities, Agencies, or other Entities of which you are currently a member and/or officer and/or employed by, and give the title and dates of any position that you have held in such organization.

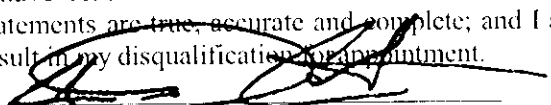
Organization: Harrison County Child Welfare BoardTitle: President Dates: 10/2018 - Present

Organization: _____

Title: _____ Dates: _____

Reasons for Seeking Appointment: Please attach a brief narrative outlining your interests and qualifications for seeking appointment. You may also add a résumé or additional information.

I have read and understand the instructions and appointment process. The foregoing and any attached statements are true, accurate and complete; and I agree that any misrepresentation or omission of facts may result in my disqualification for appointment.

 1/10/2022

Signature

Date

FILE COMPLETED FORM WITH CITY ADMINISTRATION OFFICE BY DEADLINE FOR PROCESSING.

ATTN: Lacy Burson
401 S. Alamo
Marshall, Texas 75670

(Original copy will be on file in the City Administration Office for 12 months.)

Note: Information provided on this form is public and subject to the Texas Public Information Act (Government Code Chapter 552)

ITEM 9E

**CONSIDER APPROVAL OF A
RECOMMENDATION FOR
APPOINTMENTS TO THE VISIT
MARSHALL BOARD**

ITEM 10

CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA

ITEM 11

EXECUTIVE SESSION

AN EXECUTIVE SESSION PURSUANT TO SECTION 551.071 WHICH AUTHORIZES A GOVERNMENTAL BODY TO CONSULT WITH ITS ATTORNEY CONTEMPLATED LITIGATION; AND ON A MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE GOVERNMENTAL BODY UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THIS CHAPTER

ITEM 12

ADJOURNMENT