

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. 2008-213, ESTABLISHING A POLICY FOR ADOPTION, PREGNANCY, CHILDBIRTH, AND INFANT NURSING FOR CITY EMPLOYEES

WHEREAS, the city adopted the Leave for Adoption, Pregnancy, Childbirth, and Infant Nursing policy for city employees with Resolution No. 2008-213, effective May 20, 2008; and

WHEREAS, in July, 2023, the State of Tennessee passed the Tennessee Pregnant Workers Fairness Act (TPWFA), which requires employers with 15 or more employees to provide reasonable accommodations for medical needs related to pregnancy, childbirth, or other similar medical conditions; and

WHEREAS, the proposed policy amendment shall replace the existing Leave for Adoption, Pregnancy, Childbirth, and Infant Nursing Policy to comply with the Tennessee Pregnant Workers Fairness Act and specifically adds provisions related to break time and private space.

Now, therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That Resolution No. 2008-213 adopting an Adoption, Pregnancy, Childbirth, and Infant Nursing Policy is amended by substituting the following in place of the existing policy in its entirety:

Leave for adoption, pregnancy, childbirth, and infant nursing is provided pursuant to the Tennessee Maternity Leave Act (T.C.A. Section 4-21-408) as amended. Adoption, pregnancy, childbirth and infant nursing may be events eligible for leave pursuant to federal law such as FMLA and ADA which may also be applicable.

T.C.A. Section 4-21-408 requires that its provisions be set out verbatim in the personnel policies.

T.C.A. Section 4-21-408 states:

(a) Employees who have been employed by the same employer for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable, referred to as "leave" in this section. With regard to adoption, the four-month period shall begin at the time an employee receives custody of the child.

(b) (1) Employees who give at least three (3) months' advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave.

(2) Employees who are prevented from giving three (3) months' advance notice because of a medical emergency that necessitates that leave begin earlier than originally anticipated shall not forfeit their rights and benefits under this section solely because of their failure to give three (3) months' advance notice.

(3) Employees who are prevented from giving three (3) months' advance notice because the notice of adoption was received less than three (3) months in advance shall not forfeit their rights

and benefits under this section solely because of their failure to give three (3) month's advance notice.

(c) (1) Leave may be with or without pay at the discretion of the employer. Such leave shall not affect the employees' right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which the employees were eligible at the date of their leave, and any other benefits or rights of their employment incident to the employee's employment position; provided, that the employer need not provide for the cost of any benefits, plans or programs during the period of such leave, unless the city so provides for all employees on leaves of absence.

(2) If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable under this section for failure to reinstate the employee at the end of the leave period.

(3) The purpose of this section is to provide leave time to employees for adoption, pregnancy, childbirth and nursing the infant, where applicable; therefore, if an employer finds that the employee has utilized the period of leave to actively pursue other employment opportunities or if the employer finds that the employee has worked part time or full time for another employer during the period of leave, then the employer shall not be liable under this section for failure to reinstate the employee at the end of the leave.

(4) Whenever the employer shall determine that the employee will not be reinstated at the end of the leave because the employee's position cannot be filled temporarily or because the employee has used the leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

(d) Nothing contained within the provisions of this section shall be construed to:

(1) Affect any bargaining agreement or company policy that provides for greater or additional benefits than those required under this section;

(2) Apply to any employer who employs fewer than one hundred (100) full-time employees on a permanent basis at the job site or location; or

(3) Diminish or restrict the rights of teachers to leave pursuant to title 49, chapter 5, part 7, or to return or to be reinstated after leave.

(e) The provisions of this section shall be included in the next employee handbook published by the employer after May 27, 2005.

An employee may use available sick and vacation leave during leave for adoption, pregnancy, childbirth, and infant nursing. Once all available paid leave is exhausted, the balance of the leave will be unpaid.

Should a leave need to be extended due to complications of the pregnancy, a request for an extension along with a licensed medical practitioner's statement indicating the problem and anticipated length of absence should be submitted to the Human Resources Director.

Leave taken for adoption, pregnancy, childbirth, and infant nursing counts as time toward Family and Medical Leave Act (FMLA) leave and runs concurrently with FMLA leave.

Employees who are approved for adoption, pregnancy, childbirth, and infant nursing leave must make arrangements with the Human Resources Department to assure continuation of applicable benefits.

The city adheres to the Tennessee Pregnant Workers Fairness Act for accommodations related to pregnant workers. For specific accommodations, employees and applicants should contact the Human Resources Department.

Break Time to Pump Breast Milk

Covered employees have the right to take reasonable break time to express breast milk for their nursing child. For one year after the child's birth, employees may take reasonable break time "each

time such employee needs to express the milk." The city will not deny a covered employee a needed break to pump. The frequency and duration of breaks needed to express milk may vary depending on factors related to the nursing employee and the child. Factors such as the location of the space and the steps reasonably necessary to express breast milk, such as pump setup, may also affect the duration of time an employee will need to express milk and will be considered.

Private Space to Pump Breast Milk

The city will provide covered employees with "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk." Under the FLSA, a bathroom, even if private, is not a permissible location for the employer to provide for pumping breast milk.

The location provided will be functional as a space for expressing breast milk. If the space is not dedicated to the nursing employee's use, it will be made available when needed by the employee. A space temporarily created or converted into a space for expressing breast milk or made available when needed by the nursing employee is sufficient provided that the space is shielded from view and free from any intrusion from co-workers and the public.

Other Provisions

Nothing in this policy should be construed to conflict with or supersede state or federal law, or as interfering with the constitutional rights of employees.

While the city is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract between the city and its employees. This policy supersedes all policies that conflict with the terms of this policy. Furthermore, this statement constitutes ONLY the policy of the city. A finding of a violation of this policy does not mean that the conduct violates state and/or federal laws.

SECTION II. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION III. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of February, 2024.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY