

Ord.#5536

ORDINANCE NO: 5081
ORDINANCE TO AMEND CHAPTER 2,
ARTICLE IX, CODE OF ORDINANCES
SO AS TO UPDATE THE OCCUPATIONAL
SAFETY AND HEALTH PROGRAM SECTIONS

WHEREAS, in compliance with Public Chapter 561 of the General Assembly of the State of Tennessee for the year 1972, the City of Memphis established the Occupational Safety and Health Program for the employees of the City of Memphis, and

WHEREAS, due to various changes in subsequent years, it has become necessary to amend said Sections 2-376 through 2-384 of the City Code to comply with more recent state requirements.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 2, Article IX, Code of Ordinances, Section 2-376 through 2-384, be and the same are hereby amended as follows:

ARTICLE IX. OCCUPATIONAL
SAFETY AND HEALTH PROGRAM

Section 2-376. Title

This article shall be known as "The Occupational Safety and Health Program" for the employees of the City of Memphis.

Section 2-377. Created

There is hereby created and modified a safety and health program for the employees of the City as follows hereinafter.

Section 2-378. Purpose

This plan is applicable to all employees, part-time or full-time, seasonal or permanent. The purpose of this plan is to provide guidelines and procedures for implementing the Occupational Safety and Health Program for the employees of the City of Memphis.

Provide a safe and healthful place and condition of employment that includes:

- a. Top Management Commitment and Employee Involvement;
- b. Continually analyze the worksite to identify all hazards and potential hazards;
- c. Develop and maintain methods for preventing or controlling the existing or potential hazards; and Train managers, supervisors, and employees to understand and deal with worksite hazards.

The City of Memphis in electing to update and maintain an effective occupational safety and health program for its employees, shall:

- a. Provide a safe and healthful place and condition of employment.
- b. Acquire and safety equipment, personal protective equipment, engineering controls and for other devices where reasonably necessary to protect employees.

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- c. **Make, keep, preserve and make available to the Commissioner of Labor and Workforce Development, his designated representatives, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, including the Administrator of Occupational Safety and Health, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.**
- d. **Consult with the Commissioner of Labor and Workforce Development or his designated representative with regard to the adequacy of the form and content of such records.**
- e. **Consult with the Commissioner of Labor and Workforce Development regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be resolved under an occupational safety and health standard promulgated by the State.**
- f. **Assist the Commissioner of Labor and Workforce Development with monitoring activities to determine program effectiveness and compliance with the occupational safety and health standards.**
- g. **Make a report to the Commissioner of Labor and Workforce Development as may be required.**
- h. **Provide reasonable opportunity for and encourage the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices which may be injurious to employees' safety and health.**
- i. **Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this Program Plan.**

Section 2-379. Definitions

For the purposes of this program, the following definitions apply:

- a. **"ACT, TOSHA, or TOSHACT" means the Tennessee Occupational Safety and Health ACT of 1972.**
- b. **"WORKPLACE SAFETY & COMPLIANCE ADMINISTRATOR or "SAFETY ADMINISTRATOR" means the designee who shall plan, develop, and administer the City of Memphis' occupational safety and health program.**
- c. **"APPOINTING AUTHORITY" is the Mayor of the City of Memphis having legally designated powers of appointment, employment, or removal therefrom for a specific department, board, commission, division, or other agency of this employer.**
- d. **"CHIEF ADMINISTRATIVE OFFICER" means the officer immediately in command under the Mayor of the City of Memphis.**
- e. **"CHIEF EXECUTIVE OFFICER" means Mayor of the City of Memphis.**
- f. **"CITY" means the City of Memphis**
- g. **"COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT" means the chief**

executive officer of the Tennessee Department of Labor and Workforce Development. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Labor and Workforce Development.

- h. "EMPLOYEE" means any person performing services for the City as an employee and listed on the City payroll as an employee, including temporary and permanent employees. This definition shall not include independent contractors, their agents, their servants and their employees.
- i. "EMPLOYER" means the City of Memphis and shall include each administrative department, board, commission, division, or other agency of the City of Memphis.
- j. "ESTABLISHMENT" or "WORKSITE" means a single physical location under the control of the City or where business is conducted, services are rendered, or industrial operations are performed.
- k. "IMMINENT DANGER" means any conditions or practices in any place of Employment which are such that a hazard exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such hazard can be eliminated through normal compliance enforcement procedures.
- l. "INSPECTOR" means the individual(s) designated by the Mayor, Division Directors, Administrator or Safety Coordinator to conduct inspections provided for herein. If no such inspector(s) is designated, inspections shall be conducted by the Safety Coordinator, OSHA Coordinators, or others designated by the appropriate authority.
- m. "PERSON" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any organized group of persons.
- n. "SAFETY COORDINATOR" means the individual(s) appointed or designated by the Workplace Safety & Compliance Administrator to carry out powers, duties, and responsibilities under this program. When the phrase "or designee" appears after the term "ADMINISTRATOR" "or designee" this phrase shall be construed to mean the SAFETY COORDINATOR, unless the context indicates otherwise.
- o. "SERIOUS INJURY or HARM" means that type of harm that would cause permanent or prolonged impairment of the body in that:
 - 1. a part of the body would be permanently removed or rendered functionally useless or substantially reduced in efficiency on or off the job (e.g., leg shattered so severely that mobility would be permanently reduced), or
 - 2. a part of an internal body system would be inhibited in its normal performance or function to such a degree as to shorten life or cause reduction in physical or mental efficiency (e.g., lung impairment causing shortness of breath).
- p. "STANDARD" means an occupational safety and health standard promulgated by the Commissioner of Labor and Workplace Development in accordance with Section VI of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. § 50-9-201), which requires conditions or the adoption or the use of one or more practices, means, methods, operations, or processes, or the use of equipment or personal protective equipment necessary or appropriate to provide safe and healthful employment and places of employment.

- q. "STATE COMMISSIONER" means Commissioner of Labor and Workforce Development of the State of Tennessee.

Section 2-380. Coverage

The provisions of this program shall apply to employees of each administrative department, commission, board, division or other agency of the City of Memphis.

Section 2-381. Employer's rights and duties

Rights and duties of the employer shall include, but are not limited to, the following provisions:

- a. Employer shall furnish to each employee a place of employment free from recognized hazards that cause or are likely to cause death or serious injury or harm to employees.
- b. Employer shall comply with occupational safety and health standards and regulations promulgated pursuant to Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. § 50-9-201).
- c. Employer shall refrain from any unreasonable restraint on the right of the Commissioner of Labor and Workforce Development to inspect the employer's place(s) of business. Employer shall assist the Commissioner of Labor and Workforce Development in the performance of their monitoring duties by supplying or by making available information, personnel, or aids reasonably necessary to conduct effective monitoring of activities.
- d. Employer is entitled to participate in the development of standards by submission of comments on proposed standards; participation in hearings on proposed standards; or by requesting the development of standards on a given issue under Section 8 of the Tennessee Occupational Safety and Health Act of 1972.
- e. Employer is entitled to request an order granting a variance from an occupational safety and health standard.
- f. Employer is entitled to protection of its legally privileged communication.
- g. Employer shall implement a plan to inspect all installations, departments, bureaus, and offices to ensure the provisions of this program are complied with and carried out.
- h. Employer shall notify and inform any employee who has been or is being exposed in a biologically significant manner to harmful agents or material in excess of the applicable standard. Employer shall ensure corrective action is being taken to mitigate exposure.
- i. Employer shall notify all employees of their rights and duties under this program.

Section 2-382. Employee's rights and duties

Rights and duties of employees shall include, but are not limited to, the following provisions:

- a. Each employee shall comply with occupational safety and health standards and all

- rules, regulations, and orders issued pursuant to this program which are applicable to his or her own actions and conduct.
- b. Each employee shall be notified by the placement notices upon bulletin boards, or other places of common passage, of any application for a permanent or temporary order granting the employer a variance from any provision of the TOSH Act or any standard or regulation promulgated under the Act.
 - c. Each employee shall be given the opportunity to participate in any hearing which concerns an application by the employer for a variance from a standard or regulation promulgated under the Act.
 - d. Any employee who may be adversely affected by a standard or variance issued pursuant to the Act or this program may file a petition with the Commissioner of Labor and Workforce Development or the Safety Coordinator.
 - e. Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall be provided by the employer with information on any significant hazards to which they are or have been exposed, relevant symptoms, and proper conditions for safe use or exposure. Employees shall also be informed of corrective action being taken.
 - f. Subject to regulations issued pursuant to this program, any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Safety Coordinator or Inspector at the time of the physical inspection of the worksite.
 - g. Any employee may bring to the attention of the Safety Coordinator any violation or suspected violations of the standards or any other health or safety hazards.
 - h. No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or relating to this program.
 - i. Any employee who believes that he or she has been discriminated against or discharged in violation of any of these sections may within (30) days after such violation occurs, file a complaint with the City of Memphis Equal Employment Opportunity Office. Such employee, may also, within thirty (30) days after such violation occurs, file a complaint with the Commissioner of Labor and Workforce Development alleging such discrimination.
 - j. Nothing in this section or any other provision of this program shall be deemed to authorize or require any employee to undergo medical examination, immunization, or treatment if the employee objects thereto on religious grounds, except where it is necessary for the protection of the health or safety of others or when a medical examination may be reasonably required for performance of a specific job.
 - k. Employees shall report any accident, injury, or illness resulting from their job, however minor it may seem to be, to their supervisor prior to the end of their shift.
 - l. If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, the employee should report the condition to a Supervisor, Manager, the Safety Administrator, Safety Coordinator or to TOSHA.

Section 2-383. Standards authorized

The standards adopted under this Program Plan are the applicable standards developed and promulgated under Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972. Additional standards may be promulgated by the governing body as deemed necessary for the safety and health of employees. Note: 29 CFR 1910 General Industry Regulations; 29 CFR 1926 Construction Industry Regulations; and the Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, CHAPTER 0800-01-1 through CHAPTER 0800-01-11 are the standards and rules invoked.

Section 2-384. Variances from standards authorized

The Safety Administrator may apply for a variance as a result of a complaint from an employee or of his knowledge of certain hazards or exposures. The Safety Administrator should definitely believe that a variance is needed before the application for a variance is submitted to the Commissioner of Labor and Workforce Development. The procedure for applying for a variance to the adopted safety and health standards is as follows:

- a. The application for a variance shall be prepared in writing and shall contain:
 1. A specification of the standard or portion thereof from which the variance is sought.
 2. A detailed statement of the reason(s) why the employer is unable to comply with the standard supported by representations by qualified personnel having first-hand knowledge of the facts represented.
 3. A statement of the steps employer has taken and will take (with specific date) to protect employees against the hazard covered by the standard.
 4. A statement of when the employer expects to comply and what steps have or will be taken (with dates specified) to come into compliance with the standard.
 5. A certification that the employer has informed employees, their authorized representative(s), and/or interested parties by giving them a copy of the request, posting a statement summarizing the application (to include the location of a copy available for examination) at the places where employee notices are normally posted and by other appropriate means. The certification shall contain a description of the means actually used to inform employees and that employees have been informed of their right to petition the Commissioner of Labor and Workforce Development for a hearing.
- b. The application for a variance should be sent to the Commissioner of Labor and Workforce Development by registered or certified mail.
- c. The Commissioner of Labor and Workforce Development will review the application for a variance and may deny the request or issue an order granting the variance. An order granting a variance shall be issued only if it has been established that:
 1. The employer
 - i. Is unable to comply with the standard by the effective date

because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology; or

- ii. Has taken all available steps to safeguard employees against the hazard(s) covered by the standard; or
 - iii. Has an effective Program Plan for coming into compliance with the standard as quickly as possible.
2. The employee is engaged in an experimental Program Plan as described by the TOSHACT.
- d. A variance may be granted for a period of no longer than is required to achieve compliance or one (1) year, whichever is shorter.
 - e. Upon receipt of an application for an order granting a variance, the Commissioner to whom such application is addressed may issue an interim order granting such a variance for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than one hundred eighty (180) days.
 - f. The order or interim order granting a variance shall be posted at the worksite and employees notified of such order by the same means used to inform them of the application for said variance.

Section 2-385. Inspections

It is the intention of the City and responsible officials to have an occupational safety and health program that will insure the welfare of employees. In order to be aware of hazards, periodic inspections must be performed. These inspections will enable the identification of hazards or unsafe conditions or operations that will require correction in order to maintain safe and healthful worksites. Inspections made on a pre-designated basis may not yield the desired results. Inspections will be conducted, therefore, on a random basis at intervals not to exceed thirty (30) calendar days.

Advance Notice of Inspections

1. Generally, advance notice of inspections will not be given, as this precludes the opportunity to make minor or temporary adjustments in an attempt to create misleading impression of conditions in an establishment.
2. There may be occasions when advance notice of inspections will be necessary in order to conduct an effective inspection or investigation. When advance notice of inspection is given, employees or their authorized representative(s) will also be given notice of the inspection.

Authorization

In order to carry out the purposes of this program, the Safety Administrator or the Administrator's designee or authorized representative(s), are authorized:

1. To enter without delay and at any reasonable time, any establishment, facility, construction site, plant or any other worksite, area, work place or environment where work is being performed by an employee of the City; and

2. To inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to interview any supervisor, operator, agent, or employee working therein.
3. If an imminent danger situation is found, alleged, or otherwise brought to the attention of the Safety Administrator or designee during a routine inspection, he/she shall immediately inspect the imminent danger situation in accordance with Section XII of this plan before inspecting the remaining portions of the establishment, facility, or worksite.
4. A management representative and an employee representative shall be given an opportunity to consult with or to accompany the inspector during the physical inspection of any work place for the purpose of aiding such inspection. The right of accompaniment may be denied to any person whose conduct interferes with a full and orderly inspection.
5. The inspection shall be such as to preclude unreasonable disruptions of the operations of the workplace or establishment.
6. Interviews of employees during the course of the inspection may be made when such interviews are essential to the investigation.
7. The Safety Administrator or designee need not personally make an inspection of each and every worksite once every thirty (30) days. He may delegate the responsibility for such inspections to supervisors or other personnel provided:
8. Inspections conducted by supervisors or other personnel should be at least as effective as those made by the Safety Administrator or designee.
9. Records are made of the inspections, discrepancies found and corrective actions taken. This information is forwarded to the Safety Administrator. The Safety Administrator shall maintain records of inspections to include identification of worksite inspected, dates of inspection, description of violations of standards or other unsafe conditions or practices found, and corrective action taken toward abatement. Those inspection records shall be subject to review by the Commissioner of Labor and Workforce Development or his authorized representative.

Section 2-366. Notice of Unsafe or Unhealthy Conditions Hearings

- a. If upon an inspection or investigation, the Safety Administrator or the Administrator's authorized representative, finds that any work place is not in compliance with any applicable standard, rule, regulation, or order, the Safety Administrator shall, with reasonable promptness, issue to the administrative officer responsible for the workplace a written notice that states:
 - (1) the nature and location of the violation;
 - (2) the standard rule, regulation or order violated;
 - (3) the abatement and correction requirements; and
 - (4) a period of time during which such abatement and correction must be accomplished.

If required by the Safety Administrator or the Safety Administrator's representative, a copy of such notice shall immediately be posted at the location referred to in the notice and remain posted until the alleged violation has been corrected or vacated.

- b. At any time within ten (10) days after receipt of such Notice of Unsafe or Unhealthful Conditions, anyone affected may advise the Safety Administrator of objections to the terms and conditions of the notice. Upon receipt of such objections and after an investigation, the Safety Administrator shall determine whether such notice as written should be affirmed, modified or vacated.

Section 2-387. Penalties

- a. No civil or criminal penalties shall be issued against any official, employee, or any other person for failure to comply with safety and health standards or any rules or regulations issued pursuant to this Program Plan.
- b. Any employee, regardless of status, who willfully and/or repeatedly violates, or causes to be violated, any safety and health standard, rule, or regulation or any abatement order shall be subject to disciplinary action by the appointing authority. It shall be the duty of the appointing authority to administer discipline by taking action in one of the following ways as appropriate and warranted:
1. Oral reprimand.
 2. Written reprimand.
 3. Suspension for three (3) or more working days.
 4. Termination of employment.
- c. The employee being disciplined under this paragraph shall have all usual rights of appeal regarding any discipline received based on whether the employee is temporary or permanent, and whether the employee is appointed or serves in a Civil Service position.

Section 2-388. Recordkeeping and Reporting

Details of how reports of occupational accidents, injuries, and illnesses will reach the record-keeper are specified by ACCIDENT REPORTING PROCEDURES, Appendix IV to this plan. The Rule of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, OCCUPATIONAL SAFETY AND HEALTH RECORD-KEEPING AND REPORTING, CHAPTER 0800-01-03, as authorized by T.C.A., Title 50.

Section 2-389. Administration

- a. The Safety Administrator of Occupational Safety and Health is designated to perform duties or to exercise powers assigned so as to administer this Occupational Safety and Health Program.
1. The Safety Administrator of Occupational Safety and Health may designate person or persons as the Safety Administrator deems necessary to carry out the Safety Administrator's powers, duties, and responsibilities under this program.
 2. The Safety Administrator of Occupational Safety and Health may delegate the power to make inspections, provided procedures employed are as effective as those employed by the Safety Administrator.
 3. The Safety Administrator of Occupational Safety and Health shall employ measures to coordinate, to the extent possible, activities of all departments to promote efficiency and to minimize any inconveniences under this program.

4. The Safety Administrator of Occupational Safety and Health or designee may request qualified technical personnel from any department or section of government to assist him in making compliance inspections, accident investigations, or as the Safety Administrator may otherwise deem necessary and appropriate in order to carry out his duties under this program.
 5. The Safety Administrator of Occupational Safety and Health or designee shall prepare all required reports to the Commissioner of Labor and Workforce Development required by subsection (g) of Section 1 of this plan.
 6. The Safety Administrator of Occupational Safety and Health shall make or cause to be made periodic and follow-up inspections of all facilities and workites where employees of this employer are employed. He shall make recommendations to correct any hazards or exposures observed. He shall make or cause to be made any inspections required by complaints submitted by employees or inspections requested by employees.
 7. The Safety Administrator of Occupational Safety and Health shall assist any officials of the employer in the investigation of occupational accidents or illnesses.
 8. The Safety Administrator of Occupational Safety and Health shall maintain or cause to be maintained records required by this plan.
 9. The Safety Administrator of Occupational Safety and Health or designee shall, in the eventuality that there is a fatality or an accident resulting in the hospitalization of three or more employees, insure that the Commissioner of Labor and Workforce Development receives notification of the occurrence within eight (8) hours from the time that the Safety Administrator or designee learned of such occurrence.
- b. The administrative or operational head of each department, division, service center, board, or other agency of the City shall be responsible for the implementation of this occupational safety and health program within their respective areas.
1. The administrative or operational head shall follow the directions of the Safety Administrator on all issues involving occupational safety and health of employees as set forth in this plan.
 2. The administrative or operational head shall comply with all abatement orders issued in accordance with the provisions of this plan or request a review of the order with the Safety Administrator within the abatement period.
 3. The administrative or operational head should make periodic safety surveys of the establishment under his jurisdiction to become aware of hazards or standards violations that may exist and make an attempt to immediately correct such hazards or violations.
 4. The administrative or operational head shall investigate all occupational accidents, injuries, or illnesses reported to him. He shall report such accidents, injuries, or illnesses to the Safety Administrator or designee along with his findings and/or recommendations.

Section 2-390. Compliance with City or State regulations not to excuse compliance with the other.

Compliance with any other law, statute, resolution, or executive order, as applicable, which regulates safety and health in employment and places of employment shall not excuse the employer, the employee, or any other person from compliance with the provisions of this program.

Compliance with any provisions of this program or any standard, rule, regulation, or order issued pursuant to the program shall not excuse the employer, the employee, or any other person from compliance with the law, statute, resolution, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, resolution, or executive order, as applicable, is specifically repealed.

Section 2-391 A

EMPLOYEE COMPLAINT PROCEDURE

1. If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, he should report the condition to the Safety Administrator of Occupational Safety and Health.
2. The complaint should be in the form of a letter and give details on the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter but need not do so if he wishes to remain anonymous (see subsection (h) of Section 1 of this plan).

3. Upon receipt of the complaint letter, the Safety Administrator will evaluate the condition(s) and institute any corrective action, if warranted. Within ten (10) working days following the receipt of the complaint, the Safety Administrator will answer the complaint in writing stating whether or not the complaint is deemed to be valid. If valid, what action has been or will be taken to correct or abate the condition(s), and the designated time period for correction or abatement. Answers to anonymous complaints will be posted upon bulletin boards or other places of common passage where the anonymous complaint may be reasonably expected to be seen by the complainant for a period of three (3) working days.
4. If the complainant finds the reply not satisfactory because it was held to be invalid, the corrective action is felt to be insufficient, or the time period for correction is felt to be too long, he may forward a letter to the Chief Executive Officer or to the City Council explaining the condition(s) cited in his original complaint and why he believes the answer to be inappropriate or insufficient.

5. The Chief Executive Officer or the City Council will evaluate the complaint. If warranted, the Chief Executive Officer or City Council will begin to take action to correct or abate the condition(s) through arbitration or administrative sanctions. An answer with a decision concerning the complaint will be sent to the complainant within ten (10) working days following receipt of the complaint or the next regularly scheduled meeting of the City Council whichever is greater.

6. After the above steps have been followed and the complainant is still not satisfied with the results, he may then file a complaint with the Commissioner of Labor and Workforce Development. Any complaint filed with the Commissioner of Labor and Workforce Development shall include copies of all related correspondence with the Safety Administrator and the Chief Executive Officer or the representative of the governing body.
7. Copies of all complaints and answers thereto will be filed by the Safety Administrator who shall make them available to the Commissioner of Labor and Workforce Development or his

designated representative upon request.

Section 2-391 B. Education and Training

a. Safety Administrator and/or Inspector(s):

1. Arrangements will be made for the Safety Administrator and/or designee Safety Coordinator to attend training seminars, workshops, etc., conducted by the State of Tennessee or other agencies. .
2. Access to reference materials such as 29 CFR 1910 General Industry Regulations; 29 CFR 1926 Construction Industry Regulations; The Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, and other equipment/supplies, deemed necessary for use in conducting compliance inspections, conducting local training, wiring technical reports, and informing officials, supervisors, and employees of the existence of safety and health hazards will be furnished.

b. A suitable safety and health training program for employees will be established. This program will, at a minimum:

1. Instruct each employee in the recognition and avoidance of hazards or unsafe conditions and of standards and regulations applicable to the employee's work environment to control or eliminate any hazards, unsafe conditions, or other exposures to occupational illness or injury.
2. Instruct employees who are required to handle or use poisons, acids, caustics, toxicants, flammable liquids, or gases including explosives, and other harmful substances in the proper handling procedures and use of such items and make them aware of the personal protective measures, personal hygiene, etc., which may be required.
3. Instruct employees who may be exposed to environments where harmful plants or animals are present of the hazards of the environment on how to best avoid injury or exposure, and the first aid procedures to be followed in the event of injury or exposure.
4. Instruct all employees of the common deadly hazards and how to avoid them, such as Falls; Equipment Turnover; Electrocution; Struck by/Caught In; Trench Cave In; Heat Stress, Confined Spaces and Drowning.
5. Instruct employees on hazards and dangers of confined or enclosed spaces.
 - i. "Confined or enclosed space" means a space having a limited means of egress and which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, boilers, ventilation or exhaust ducts, sewers, underground utility accesses, tunnels, pipelines, lift stations and open top spaces more than four feet (4') in depth such as pits, tubs, vaults, and vessels.
 - ii. Employees will be given general instruction on hazards involved, precautions to be taken, and on use of personal protective and

emergency equipment required. They shall also be instructed on all specific standards or regulations that apply to work in dangerous or potentially dangerous areas.

- iii. The immediate supervisor of any employee who must perform work in a confined or enclosed space shall be responsible for instructing employees on danger of hazards which may be present, precautions to be taken, and use of personal protective and emergency equipment, immediately prior to their entry into such an area and shall require use of appropriate personal protective equipment.

Section 2-392. Imminent Danger Procedures

- a. Any discovery, any allegation, or any report of imminent danger shall be handled in accordance with the following procedures:
 - 1. The Safety Administrator or Safety Coordinator or their designee shall immediately be informed of the alleged imminent danger situation and he shall immediately ascertain whether there is a reasonable basis for the allegation.
 - 2. If the alleged imminent danger situation is determined to have merit by the Safety Administrator he shall make or cause to be made an immediate inspection of the alleged imminent danger location.
 - 3. As soon as it is concluded from such inspection that conditions or practices exist which constitute an imminent danger, the Safety Administrator or Safety Coordinator or Inspector shall attempt to have the danger corrected. All employees at the location shall be informed of the danger and the supervisor or person in charge of the worksite shall be requested to remove employees from the area, if deemed necessary.
 - 4. The administrative or operational head of the workplace in which the imminent danger exists, or his authorized representative, shall be responsible for determining the manner in which the imminent danger situation will be abated. This shall be done in cooperation with the Safety Administrator or Safety Coordinator and to the mutual satisfaction of all parties involved.
 - 5. The imminent danger shall be deemed abated if:
 - i. The imminence of the danger has been eliminated by removal of employees from the area of danger.
 - ii. Conditions or practices which resulted in the imminent danger have been eliminated or corrected to the point where an unsafe condition or practice no longer exists.
 - 6. A written report shall be made by or to the Safety Administrator describing in detail the imminent danger and its abatement. This report will be maintained by Safety Administrator in accordance with state guidelines and regulations.
- b. Refusal to Abate.

1. Any refusal to abate an imminent danger situation shall be reported to the Safety Administrator and Chief Executive Officer immediately.
2. Safety Administrator and/or Chief Executive Officer shall take whatever action may be necessary to achieve abatement.

ABATEMENT ORDERS AND HEARINGS

- a. Whenever, as a result of an inspection or investigation, the Safety Administrator or Safety Coordinator(s) finds that a worksite is not in compliance with the standards, rules or regulations pursuant to this plan and is unable to negotiate abatement with the administrative or operational head of the worksite within a reasonable period of time, the Safety Administrator shall:
 1. Issue an abatement order to the head of the worksite.
 2. Post or cause to be posted, a copy of the abatement order at or near each location referred to in the abatement order.
- b. Abatement orders shall contain the following information:
 1. The standard, rule, or regulation which was found to be violated.
 2. A description of the nature and location of the violation.
 3. A description of what is required to abate or correct the violation.
 4. A reasonable period of time during which the violation must be abated or corrected.
- c. At any time within ten (10) days after receipt of an abatement order, anyone affected by the order may advise the Safety Administrator in writing of any objections to the terms and conditions of the order. Upon receipt of such objections, the Safety Administrator shall refer the matter to the CAO to conduct an investigation or hearing if necessary with all interested and/or responsible parties in an effort to resolve any objections. Within (5) working days after completion of the investigation or hearing, a decision will be issued that shall be binding on all parties and final.

Section 2-393. Confidentiality of Privileged Information

All information obtained by or reported to the Safety Administrator or designee pursuant to this plan of operation or the legislation (Ordinance, or Executive Order) enabling this occupational safety and health program which contains or might reveal information which is otherwise privileged shall be considered confidential to the extent allowed by law. In addition to making disclosures as required by law, the City may provide when relevant in any proceeding under this program. This information may also be disclosed to the Commissioner of Labor and Workforce Development or their authorized representatives in carrying out their duties under the Tennessee Occupational Safety and Health Act of 1972.

Section 2-394. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of said sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, that this Ordinance shall take effect from and after the date it shall have been passed by the City Council, signed by

from and after the date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

XVI. DISCRIMINATION INVESTIGATIONS AND SANCTIONS

Pursuant to Tennessee Department of Labor and Workforce Development Occupational Safety and Health, DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1972 0800-01-08, as authorized by T.C.A., Title 50, any employee who believes they have been discriminated against or discharged in violation of Tenn. Code Ann § 50-3-409 can file a complaint with the Safety Administrator or the EEO/Labor Relations Office within 30 days, after the alleged discrimination occurred. Also, the agency agrees the employee has a right to file their complaint with the Commissioner of Labor and Workforce Development within the same 30 day period. The Commissioner of Labor and Workforce Development may investigate such complaints, make recommendations, and/or issue a written notification of a violation.

XVII. COMPLIANCE WITH OTHER LAWS NOT EXCUSED

- a. Compliance with any other law, statute, ordinance, or executive order, which regulates safety and health in employment and places of employment, shall not excuse the employer, the employee, or any other person from compliance with the provisions of this Program Plan.
- b. Compliance with any provisions of this Program Plan or any standard, rule, regulation, or order issued pursuant to this Program Plan shall not excuse the employer, the employee, or any other person from compliance with the law, statute, ordinance, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, ordinance, or executive order, as applicable, is specifically repealed.

THE FOREGOING ORDINANCE
5536 PASSED

1st Reading 10-01-2013
2nd Reading 10-15-2013
3rd Reading 11-05-2013

Approved Edmund J. Feld
Chairman of Council

Date Signed: 11/19/2013

Approved: [Signature]
Mayor, City of Memphis WKS

Date Signed: 11/22/13

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Gries
Comptroller