

ORDINANCE NUMBER 5765

**SUBSTITUTE ORDINANCE**

**TO AMEND TITLE 3, CHAPTER 16 IN THE CITY OF MEMPHIS CODE OF ORDINANCES, CITY EMPLOYEE OCCUPATIONAL HEALTH PROGRAM, ESTABLISHING AN UPDATED OCCUPATIONAL SAFETY AND HEALTH PROGRAM PLAN**

**WHEREAS**, in compliance with Public Chapter 561 of the General Assembly of the State of Tennessee for the year 1972, the City of Memphis created and established an Occupational Safety and Health Program Plan ("OSHPP") for its employees under this Title; and

**WHEREAS**, the Public Sector Section of Tennessee Occupational Safety and Health Administration (TOSHA) is responsible for ensuring that local governments meet statutory responsibilities pursuant to the provisions of Tenn. Code Ann. § 50-3-912; and

**WHEREAS**, Title 3, Chapter 16 of the City of Memphis Code of Ordinances was last amended in 2004; and

**WHEREAS**, due to various updates and changes required by TOSHA, it has become necessary to amend the local ordinance and program plan to comply with more recent public sector requirements issued by TOSHA; and

**WHEREAS**, the form and substance of this amended ordinance is consistent with and pursuant to the forms, rules and regulations issued by TOSHA; and

**WHEREAS**, the form and substance of this amended ordinance ensures that the City of Memphis can maintain an updated occupational safety and health program plan in compliance with TOSHA.

**NOW, THEREFORE,**

**SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS** that Title 3, Chapter 16 of the Code of Ordinances is hereby amended in its entirety and substituted as follows:

**A. TITLE:**

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

**B. PURPOSE:**

The City of Memphis, in electing to update the established Occupational Safety and Health Program Plan, will maintain an effective and comprehensive Occupational Safety and Health Program Plan for its employees and shall:

1) 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
- d) Train managers, supervisors, and employees to understand and deal with worksite hazards.

2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.

3) Record, keep, preserve, and make available to the Commissioner of Labor and Workforce Development, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.

4) Consult with the Commissioner of Labor and Workforce Development with regard to the adequacy of the form and content of records.

5) Consult with the Commissioner of Labor and Workforce Development, as appropriate, regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be achieved under a standard promulgated by the State.

6) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this Program Plan, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.

7) 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.

**C. COVERAGE:**

The provisions of the Occupational Safety and Health Program Plan for the employees of City of Memphis shall apply to all employees of each administrative department, commission, board, division, or other agency whether part-time or full-time, seasonal or permanent.

**D. STANDARDS AUTHORIZED:**

The Occupational Safety and Health standards adopted by the City of Memphis are the same as, but not limited to, the State of Tennessee Occupational Safety and Health Standards promulgated, or which may be promulgated, in accordance with Section 6 of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. Title 50, Chapter 3).

**E. VARIANCES FROM STANDARDS AUTHORIZED:**

Upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, the City may request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, VARIANCES FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS, CHAPTER 0800-01-02, as authorized by T.C.A., Title 50. Prior to requesting such temporary variance, the City will notify or serve notice to its employees, their designated representatives, or interested parties and present them with an opportunity for a hearing. The posting of notice on bulletin boards accessible to employees shall be deemed sufficient notice to employees.

**F. ADMINISTRATION:**

For the purposes of this ordinance, the Division of Human Resources shall designate a Safety Manager of Occupational Safety and Health to perform duties and to exercise powers assigned to plan, develop, and administer this Program Plan. The Safety Manager shall develop a plan of operation for the Program Plan in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR, CHAPTER 0800-01-05, as authorized by T.C.A., Title 50.

**SECTION 2. BE IT FURTHER ORDAINED** that if any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 3. BE IT FURTHER ORDAINED** that this ordinance shall take effect from and after the date it shall have been passed, properly signed, certified, and has met all other legal requirements, and as otherwise provided by law, the general welfare of the City of Memphis requiring it.

Patrice Robinson  
Chairperson

THE FOREGOING ORDINANCE  
# 5765 PASSED  
1st Reading 12-01-2020  
2nd Reading 12-15-2020  
3rd Reading 01-05-2021  
Approved [Signature]  
Chairman of Council

Date Signed: \_\_\_\_\_

[Signature]  
APPROVED  
Mayor, City of Memphis

Date Signed: 2/8/21

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 indi-  
cated and approved by the Mayor.

Valerie C. Snipes  
Comptroller