**LEGISTAR#: 20210059**
**ORDINANCE NO.: 8211**

**AN ORDINANCE**

**AMENDING Section 4-4-30-020 of the Municipal Code of Marietta by allowing an employee to utilize an additional 90 days of pay for on-the-job injuries requiring surgery after having returned to work, as well as clarifying definitions and how the leave coordinates with the Family and Medical Leave Act.**

**NOW THEREFORE, THE COUNCIL OF THE CITY OF MARIETTA HEREBY ORDAINS:**

**Section 1.** That Paragraphs F and G of Section 4-4-30-020 of the Municipal Code of Marietta shall be amended as follows:

F. Temporary Assignments.

1. Occasionally, an employee who has suffered an on-the-job injury is cleared to return to work with restrictions but is able to perform other productive duties in his department. Department heads should make every effort to return employees to work in some productive capacity from on-the-job injuries as soon as possible. However, if light duty work or appropriate duties within the skill level and physical capability of the employee is not available within their department, the department head should consult with the human resources department for placement of the light duty employee in another department on a temporary basis. If there is still no light duty available, the employee may remain off duty on workers' compensation benefits until he/she is able to return to work without restrictions.

2. Employees on light duty work due to an on-the-job injury shall be paid the same rate of pay worked on their regular job. This provision does not apply to any period of partial loss of earnings due to an injury for which a permanent award is paid under the Workers' Compensation Act since such award is intended to compensate the employee for loss of all earnings during the stated period. Any temporary light duty work assignment provided as an accommodation to an on-the-job injury will not constitute working out of the employee's classification for purposes of Section 4-4-28-120.

G. Employee Compensation.

1. Medical bills: If an employee is injured on the job or becomes ill due to an on-the-job condition or exposure, the employee is eligible for treatment as provided under the State of Georgia Workers' Compensation Act, as amended.

2. Salary or wage, first 90 days of lost time due to the approved injury: The employee shall be paid regular straight pay up to 90 calendar days, or 67 eight-hour workdays (536 hours) or for fire personnel 751 hours, unless the claim for workers' compensation benefits is controverted by the city/BLW or by the city/BLW's workers' compensation administrator. For approved claims, no deduction will be made from any leave balance credited to the employee.

However, the employee is required to endorse the workers' compensation check to the city/BLW. The intent is to provide the employee's normal base salary or wage for the first 90 calendar days of lost time due to the injury, but not any amount greater than the employee would earn if they were working their normal base workweek.

3. Salary or wage, after the first 90 days of lost time injury: If the employee remains unable to return to work due to his on-the-job injury or illness after the first 90 days of absence, or 67 eight-hour workdays (536 hours) or for fire personnel 751 hours, the employee may choose one of the following options:

   a. Receive full salary from accrued leave balances and endorse the workers' compensation check to the city/BLW; or

   b. Receive the workers' compensation check and receive partial salary from leave balances; or

   c. Accept the workers' compensation check as total compensation. If the workers' compensation check is accepted as total compensation, no time will be deducted from any leave balance while the employee remains unable to return to work due to an on-the-job injury or illness.

   d. Notwithstanding the foregoing, at the discretion of the city manager, in consultation with the human resources director, the following option may also be made available to an eligible employee under qualifying circumstances: Continuation of salary or wage payments for up to an additional 90 days, or 67 eight-hour workdays (536 hours) or for fire personnel 751 hours, as provided in Section 4-4-30-020G(2) above.

      (i) For purposes of this discretionary option, "qualifying circumstances" means circumstances [A] that are beyond the employee's control and were not unreasonably caused or contributed to by the employee, [B] that have precluded the employee from being able to return to work due to his/her on-the-job injury or illness, and [C] that would result in substantial harm or prejudice to the employee if the relief authorized herein were not provided.

      (ii) Where this option is initially determined to be available to an employee, it will be provided in one-third (e.g., 30-day) increments, to enable the city/BLW to make any reasonable inquiries necessary and appropriate to ensure the continued existence of qualifying circumstances. An initial determination that this option is available shall create no enforceable expectation, contractual right, or property interest in the continuation of the option.

4. Accruals. Except as otherwise provided in Section 4-4-16-090A, all leave balances and benefits will continue to accrue to the employee while absent due to on-the-job injury or illness.

**Section 2.** That Section 4-4-30-020 of the Municipal Code of Marietta shall be amended to add a new Paragraph H as follows:

H. Coordination with FMLA leave.

Workers' compensation does not establish an independent basis for leave of absence. Therefore, when an on-the-job injury or illness requires an employee to be absent from work and to receive inpatient care or continuing treatment by a healthcare provider, it constitutes a serious personal health condition within the meaning of the city/BLW's FMLA policy. See Sec. 4-4-16-090A(1)(c), (2). Accordingly, where the employee otherwise meets all eligibility requirements, his/her absence shall be designated as FMLA leave; provided, however, that for any period of time during which an employee is receiving workers' compensation benefits while on FMLA leave, the requirement that he/she first use any accrued vacation, sick, holiday or compensatory leave for all or any part of the 12-week FMLA leave period shall not apply.

(Code 1978, § 4-1212; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 20; Ord. No. 7191, 6/11/2008, § 1)

**Section 3.** It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

**Section 4.** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**Section 5.** This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

**DATE: January 13, 2021** **APPROVED:** _____
**R. Steve Tumlin, Jr., Mayor**

**ATTEST:** _____
**Stephanie Guy, City Clerk**

**Approved as to Form:** _____
**Douglas R. Haynie, City Attorney**