

AN ORDINANCE

Amending the City/BLW sick leave policy to account for public health emergencies.

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

Section 1: That City Code Section 4-4-16-050 (Sick leave) be amended to add paragraph J (Public Health Emergency):

J. Public Health Emergency.

1. Applicability.

a. This section applies in the event of a declared public health emergency geographically relevant to the City/BLW, such as a pandemic event as determined by the World Health Organization (WHO) or the U.S. Centers for Disease Control and Prevention (CDC) or comparable circumstances for which the Governor has declared a public health state of emergency pursuant to O.C.G.A. § 38-3-51; provided, however, that the provisions of this section shall not take effect unless or until announced by the City Manager or his/her designee.

b. This section applies to all City employees, whether regular, full-time, part-time, temporary or seasonal, as well as volunteers, interns, and any other individuals performing services on the City's behalf, whether paid or unpaid; provided, however, that the City Manager, in his/her discretion, may exempt or limit the section's application to certain employees and/or departments depending on the nature of the public health emergency and/or the nature of the duties and responsibilities and/or services provided by such employees or departments.

2. Purpose and Intent.

a. Employees who report to work with a Contagious Condition or with Contagious Symptoms and/or Circumstances, as those terms are defined herein, pose a risk to the health and safety of other employees and/or the public. This, in turn, may significantly impact City operations, including the safe and effective delivery of critical City/BLW services, through compromised job performance, diminished productivity, inadequate staffing, or other adverse working conditions.

b. In accordance with the relevant guidance and recommendations published by Public Health Agencies, it is the purpose and intent of this section, when in effect, to regulate and impose reasonable restrictions on employees in reporting to work with a Contagious Condition or with Contagious Symptoms and/or Circumstances, as those terms are defined herein.

c. In addition, it is the purpose and intent of this section and the expectation of the City/BLW that employees will remain informed regarding the public health emergency and will take recommended precautions to reduce the risk of contracting and/or transmitting a Contagious Condition, as defined, such as receiving optional but recommended flu vaccinations, as well as covering nose or mouth when coughing or sneezing, washing or sanitizing hands, and consistently applying sanitizers in common work areas and equipment.

3. Definitions.

When in effect, this section shall be interpreted and applied in a manner consistent with the following definitions:

a. Contagious Condition. As used herein, the term, “Contagious Condition” refers to a medical condition caused by or directly associated with COVID-19/Coronavirus, SARS, swine flu, H1N1, tuberculosis, bacterial meningitis, mononucleosis, mumps, measles, rubella, chicken pox, and the like, which can be transmitted to others, either by direct physical contact with persons with the condition or by indirect contact (e.g., through objects touched by or secretions from such persons or through airborne transmission from such persons’ coughing, sneezing, etc.).

b. Contagious Symptoms. As used herein, the phrase, “Contagious Symptoms” refers to symptoms identified or recognized by a Public Health Agency as indicative of a Contagious Condition. Depending on the Contagious Condition, such symptoms may include influenza-related symptoms, fever, vomiting, diarrhea, headache, cough, sore throat, runny or stuffy nose, and muscle aches.

c. Contagious Symptoms and/or Circumstances. As used herein, the phrase, “Contagious Symptoms and/or Circumstances” refers to the following situations:

- (i) When an employee exhibits or experiences Contagious Symptoms or has been placed under a Quarantine related to the Contagious Condition by a healthcare provider or at the direction of a Public Health Agency; and/or
- (ii) When an employee has had significant or prolonged exposure to, or has been in physical contact with, a family member, household member, or other person [1] who has been diagnosed with a Contagious Condition or [2] who has been placed under a Quarantine related to the Contagious Condition by a qualified healthcare provider or at the direction of a Public Health Agency; and/or

- (iii) When an employee and/or a family member, household member, or other person with whom the employee has had significant or prolonged exposure to, or has been in physical contact with, exhibits Contagious Symptoms; and/or
- (iv) When an employee and/or a family member, household member, or other person with whom the employee has had significant or prolonged exposure to, or has been in physical contact with, has recently traveled to a geographic area or participated in any other activity identified by a Public Health Agency as presenting a heightened risk of exposure to a Contagious Condition (such as travel to an area for which the CDC has issued a Level 2 or 3 travel advisory or time spent on a cruise ship).

Employees with any questions as to whether a given situation meets the above-stated definition of “Contagious Symptoms and/or Circumstances” should contact Human Resources for further guidance.

d. Incubation Period. As used herein, the term, “Incubation Period” refers to the period of time, as determined by Public Health Agencies, between (i) when a person is exposed to a pathogen known or believed to cause a Contagious Condition and (ii) when Contagious Symptoms would be expected to begin to appear. As a general rule, persons who do not experience such symptoms at the conclusion of the Incubation Period are considered to be no longer at risk for having the Contagious Condition.

e. Quarantine. As used herein, the term, “Quarantine” refers to a period of time during which a person who was exposed to a pathogen known or believed by Public Health Agencies to cause a Contagious Condition remains physically separated from other persons to minimize the potential for further exposure. The Incubation Period for the Contagious Condition normally determines the duration of the Quarantine.

f. Public Health Agency. As used herein, the term, “Public Health Agency” refers to the CDC, the National Institutes of Health (NIH), the Health Resources and Services Administration (HRSA), the Agency for Healthcare Research and Quality (AHRQ), and the Georgia Department of Public Health (and its health districts and affiliated county health departments).

4. Workplace Requirements.

This section reflects the City/BLW’s goal of maintaining a safe and healthy work environment for its employees without unduly compromising the productivity and quality of City/BLW operations, including the safe and effective delivery of critical services. Accordingly, employees shall comply with the following workplace requirements:

- a. Any employee diagnosed with a Contagious Condition, as defined above, will not report to the workplace until cleared to return to work as provided in paragraph (d) below.

- b. Any employee with Contagious Symptoms and/or Circumstances, as defined above will not report to the workplace either until cleared to return to work as provided in paragraph (d) below or:
 - (i) In the case of an employee with significant or prolonged exposure to, or physical contact with, a family member, household member, or other person who has been diagnosed with a Contagious Condition or who has been in Quarantine as provided herein, until completion of the relevant Incubation Period as measured from the employee's last exposure to/contact with the person.

 - (ii) In the case of an employee who has exhibited Contagious Symptoms, until his/her symptoms have subsided and the employee is completely symptom-free.

 - (iii) In the case of an employee with significant or prolonged exposure to, or physical contact with, a family member, household member, or other person who has exhibited Contagious Symptoms, until the person's symptoms have subsided and the person is completely symptom-free.

 - (iv) In the case of travel to a geographic area or participation in any other activity identified as presenting a heightened risk of exposure to a Contagious Condition:
 - [1] by an employee, until completion of the relevant Incubation Period as measured from the employee's return from travel or cessation of the activity; or

 - [2] by a family member, household member, or other person with whom the employee has had prolonged exposure to, or physical contact, until completion of the relevant Incubation Period as measured from the employee's last exposure to/contact with such person.

- c. Any employee who reports to work with a Contagious Condition or with Contagious Symptoms and/or Circumstances or who, in the opinion of his/her

department head, based on observation and other objective criteria, exhibits Contagious Symptoms, will be sent home.

- d. When an employee who has been absent due to a Contagious Condition or due to Contagious Symptoms and/or Circumstances is ready to return to work and has met Public Health Agency guidelines, he/she must first contact Human Resources. Depending on the precise reason for the absence, the City may require medical documentation from a healthcare provider that the employee has been cleared to return to work.
 - (i) Any such medical documentation must be submitted to Human Resources, via email, fax, or other electronic form, for review and approval in advance of the employee's return to the workplace.
 - (ii) If an employee is unable to obtain any required medical documentation, the case will be reviewed by the Director of Human Resources and Risk Management and the City Manager.
- e. Due to the serious ramifications of non-compliance, any violation of this section may subject the employee to disciplinary action, up to and including, termination.
- f. Any employee not reporting to the workplace in accordance with this section should notify the City/BLW in the same manner as required by Section 4-4-16-050(E) of the Sick Leave Policy.

5. Absence Due to Contagious Condition or Due to Contagious Symptoms and/or Circumstances.

- a. An employee who is absent from work in accordance with this section may be required to work remotely, whether from home or from another location. The decision whether to require an employee to work remotely will be made by the Director of Human Resources, in consultation with the Department Head, and will depend upon consideration of various relevant factors, including the employee's position, the nature of his/her duties and responsibilities, logistical and other practical considerations, and the precise reason for the absence.
- b. An employee who is absent from work in accordance with this section who is not required to work remotely may be eligible to be compensated for any (non-overtime) hours they would normally have been scheduled to work during the absence for a period not to exceed fourteen (14) days.

- (i) Such paid administrative leave will be authorized when the employee submits medical documentation from a healthcare provider or a Public Health Agency confirming that the absence is due to a Contagious Condition or due to Contagious Symptoms and/or Circumstances as defined herein.
 - (ii) If the employee is unable to obtain such medical documentation, the case will be reviewed by the Director of Human Resources and Risk Management and the City Manager.
 - (iii) Unless exempted, employees on paid administrative leave in accordance with this section will be placed on standby status. Consistent with the requirements set forth in Section 4-4-24-130(H) of the City's Personnel Rules and Regulations, employees on standby must be immediately reachable during their normal work schedule by telephone, email, or other means of communication in the event it becomes necessary to contact them for work-related reasons. Exemptions from standby status will be determined by the Director of Human Resources and Risk Management, in consultation with the Department Head, based primarily on consideration of the precise reason for the absence.
 - (iv) An employee who is deemed to be ineligible for paid administrative leave under this section will be required to use accrued sick leave, annual leave, or comp time to cover the absence from work. If accrued leave is unavailable or exhausted, the employee may be recorded as absent with approved unpaid leave.
- c. If the event that an employee's absence under this section extends beyond fourteen (14) calendar days, the employee will be required to provide additional medical documentation supporting the extended absence. If the employee is unable to obtain such medical documentation, the case will be reviewed by the Director of Human Resources and Risk Management and the City Manager. Ultimately, the City will handle any extended absences in compliance with all federal and state laws and regulations, including the ADA and the FMLA, as well as the City's Personnel Rules and Regulations.

6. Amendments.

Due to the unprecedented nature of the public health emergency precipitating adoption of this section, the ongoing availability of new information, the difficulty in predicting relevant developments, and the need to act more quickly than the local legislative process allows under even ideal circumstances, the Mayor, upon consultation with the City Manager, the City Attorney, and/or the Director of Human Resources, is hereby authorized to make immediate

amendments to this section consistent with its stated intent and/or changes implemented by the Federal or State Governments. Any such amendments made to this section by the Mayor shall remain in full force and effect until the next scheduled or called meeting of the City Council, at which time said amendments may be ratified, vacated, or modified.

7. Legal Considerations.

a. This section shall be interpreted and applied in accordance with all applicable federal and state laws and regulations, including the ADA and the FMLA, as well as the City's Personnel Rules and Regulations. If any aspect of this section is determined to be inconsistent or in conflict with any subsequently enacted or promulgated federal or state law, rule, or regulation, the latter shall control to the extent of said inconsistency or conflict.

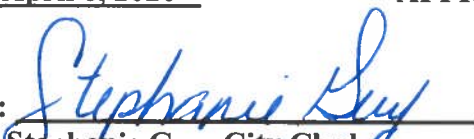
b. This section is for the City's internal, administrative use only and is not intended and should not be construed or applied as creating a higher duty of care than presently exists under applicable law. Nor does this section create any enforceable rights, entitlements, promises, or expectations or otherwise operate to enlarge the potential civil liability of the City or any City official, officer, or employee in any way.


Section 2: 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 3: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: April 6, 2020 APPROVED: 
R. Steve Tumlin, Jr., Mayor

ATTEST: 
Stephanie Guy, City Clerk

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