A meeting of the Civil Service Merit Board (hereinafter referred to as the Board) held on Wednesday October 13, 2021, at approximately 1:31 p.m. in Conference room 461. Amanda Busby called this meeting to order. Vicki Hatfield, Executive Secretary, and Michael Winchester, Board Attorney, were also present. George Shields, City Law Department, was also present via Zoom video.

Board members present:

Amanda Busby
Debbie Helsley
Bill Lyons

Board members Jamie Ballinger and Dr. Stephanie Taylor were unable to attend in person.

Amanda Busby called for approval of the Minutes of the previous business meeting held on Wednesday July 14, 2021. Bill Lyons made a motion to approve. Debbie Helsley second the motion. The motion was approved.

George Shields, from the City Law Department stated that he had nothing to report. Michael Winchester, Board Attorney, advised the Board that he had nothing to report.

Dr. Hatfield updated the Board on the progress of the online testing platform. It is currently active and, Dr. Hatfield stated that we have the option of using our content or the system’s content. Dr. Hatfield stated that we would be able to administer testing online. Dr. Hatfield stated that the Scantron test system we are using is outdated. Dr. Hatfield stated that we have 25 Chromebooks and IT is in the process of getting those set up. Dr. Hatfield stated that the process will take some time to work out any glitches there might be. Dr. Hatfield also stated that we are introducing them on promotional exams at this time where there are just a few people testing and will expand to up to 25 people once we are ready.

Dr. Hatfield stated that eSkill affords additional options, such as oral exams, where it will record responses as well as video. Dr. Hatfield stated, for uniform testing, we are using oral boards that require raters to come in from out of state and stay several days to do in person oral boards. Dr. Hatfield reiterated that the new testing platform will open up more effective means of testing.

Dr. Hatfield stated we are in the process of police recruiting, with the posting from October 1, 2021 through October 29, 2021. Dr. Hatfield stated that she is working with IPMA to offer a remote proctoring option. Dr. Hatfield stated that we are getting applicants from out of state to take exams. Dr. Hatfield explained that sometimes we lose applicants because it can be difficult...
for them to get here. Dr. Hatfield stated that her goal is to schedule the exam and the PPT in one visit.

Request by Becky Wade, Community Development Director, to exempt from Civil Service one temporary position of Project Specialist (PCN TBD) through June 30, 2023. The basis for this exemption is grant funding that will only last through June 2023. (Attachment: Exemption Request Com Dev) Dr. Hatfield explained that the funding of this position was contingent, as a temporary position and that funding was confirmed by the Finance Department. Debbie Helsley made a motion to approve the request. Bill Lyons seconded the motion. The motion was approved.

Request by Colin Ickes, Emergency Management Director, to exempt from Civil Service one additional permanent position of Emergency Management Operations Officer (PCN 9093). All positions in Emergency Management were exempted in 2016. (Attachment: Exemption Request Emergency Management) Dr. Hatfield explained that the Board exempted all positions in Emergency Management several years ago. Dr. Hatfield also explained the position of the office of Emergency Management is looking to staff a permanent Operations Officer and this position would be exempt. Bill Lyons made a motion to approve the request. Debbie Helsley seconded the motion. The motion was approved.

Discussion of any follow-up questions from the board or potential “action items” required to respond to Council’s July 27th resolution that the Mayor and her staff work with the Law Department, the Human Resources Director, and the Director of Civil Service and the Civil Service Merit Board to study and make a report to City Council no later than 120 days from the passage of the resolution regarding the city’s existing policies for racist and sexist practices within City Government as well as any recommendations to strengthen this policy as permitted under the City’s Civil Service Rules and applicable laws.

Dr. Hatfield stated the prior workshop was to update the Board and give a summary of what City Council was asking. During the workshop, Dr. Hatfield outlined policies and procedures as well as recommendations of her position and the Board’s participation. Dr. Hatfield stated that Council’s request was that the Mayor and other departments provide a report of policies and procedures on how we handle racist and sexist practices, and that something should come from Civil Service and something should come from the Administration regarding their respective roles. Dr. Lyons stated the response to Council should state what the existing policies are, and if it is adequate. Dr. Hatfield stated that George Shields and Kelly Drummond are working on policies, procedures, and recommendations to submit to Council on behalf of the Administration. Ms. Amanda Busby asked the Board if an initial draft of the existing policies, procedures and
recommendations from Civil Service could be submitted to the Law Department and to HR to
give a joint response to Council by the deadline. Dr. Hatfield stated that she could put a draft
together to submit to the Law Department by October 22, 2021. Ms. Busby made a motion that
Dr. Hatfield prepare a written draft that describes the Civil Service Merit Board’s existing policies
and procedures related to the matters requested by City Council’s July 27 resolution as well as
recommendations to strengthen current policies to provide to the Law Department by the 27th of
October, and to provide this report to the board at the November meeting. Bill Lyons seconded
the motion. The motion was approved.

Ms. Busby called for a motion to adjourn. Debbie Helsley made a motion to adjourn. Bill Lyons
seconded the motion. All Board members present voted yes to adjourn.

The meeting adjourned at 2:01pm.

____________________________________
Vicki Hatfield
Executive Secretary/Director

____________________________________
Presiding Chair
REQUEST FOR EXEMPTION FORM
CIVIL SERVICE MERIT BOARD

<table>
<thead>
<tr>
<th>Date Submitted</th>
<th>Preferred Starting Date</th>
<th>Department Name/Division</th>
<th>Org Code</th>
<th>Job Code</th>
<th>PCN</th>
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<td>12/19/21</td>
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<tr>
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<th>Hourly Rate</th>
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<td>☐ Replacement</td>
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<tr>
<td>☐ Increase in Force</td>
<td>☑ Regular Part-Time</td>
<td>☐ BWE – Event</td>
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<tr>
<td>☐ Temporary Full-Time</td>
<td>☐ Temporary Part-Time</td>
<td>☐ BWF – Fire 56 hr.</td>
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<tr>
<td>☐</td>
<td>☐</td>
<td>☑ BWG – General Gov't.</td>
<td>☑ BWU – Police/Fire 40 hr.</td>
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</table>

Provide a summary of the duties and responsibilities and/or an explanation of request.

See attached Position Description

Is position currently vacant? ☑ Yes ☐ No* *If not, name of employee currently in position and job classification.

Will this position be repeated on a consistent basis during future years? ☑ Yes* ☐ No *If yes, explain duration.

To remain as an appointed option for future Chiefs of Police

Are there other current positions with the same or similar duties & responsibilities? ☑ Yes* ☐ No *If yes, are those positions exempt (E) or classified (C)? ☐ Exempt ☑ Classified

To your knowledge, have the duties or responsibilities of the position been performed in the past? ☑ Yes* ☐ No *If yes, was the employee exempt from Civil Service? ☑ Yes* ☐ No

Please list names of employees who have performed responsibilities in the past or who are performing similar duties and responsibilities.

In the past, one Deputy Chief position was unclassified, this was stopped in 2009 and I believe that a better solution to having one position unclassified by making it a separate job classification.

M. Thomas
Director/Department Head's Signature
Oct. 27, 2021

**For Finance Use Only**
Grant funding for 12 months has been verified for this position. ☐ Yes ☐ No*

If no, please list the amount of time funding is available.

not applicable - not contingent/temp funding

Finance Director Signature

**For CS Use Only**
Comments:

Civil Service Director

Date
REQUEST FOR EXEMPTION FORM
CIVIL SERVICE MERIT BOARD

<table>
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<tr>
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<th>Org Code</th>
<th>Job Code</th>
<th>PCN</th>
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<th>Pay Plan</th>
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</thead>
<tbody>
<tr>
<td>Replace Replacement</td>
<td>Regular Full-Time</td>
<td>ATH - Athletes</td>
<td>A - Fire</td>
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<tr>
<td>Increase In Force</td>
<td>Regular Part-Time</td>
<td>BWE - Event</td>
<td>D - Gen. Gov't.</td>
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<td></td>
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</tr>
<tr>
<td></td>
<td>Temporary Part-Time</td>
<td>BWG - General Gov't.</td>
<td>P - Police</td>
</tr>
</tbody>
</table>

Provide a summary of the duties and responsibilities and/or an explanation of request.

Extend position under grant funding, KPD 250663 until 09/30/22.

Is position currently vacant?  ☐ Yes   ☑ No*
*If not, name of employee currently in position and job classification.

Joseph Elder

Will this position be repeated on a consistent basis during future years?  ☐ Yes*   ☑ No
*If yes, explain duration.

Are there other current positions with the same or similar duties & responsibilities?  ☑ Yes*   ☐ No
*If yes, are those positions exempt (E) or classified (C)?  ☐ Exempt   ☐ Classified
To your knowledge, have the duties or responsibilities of the position been performed in the past?  ☑ Yes*   ☐ No
*If yes, was the employee exempt from Civil Service?  ☑ Yes*   ☐ No
Please list names of employees who have performed responsibilities in the past or who are performing similar duties and responsibilities.

Christopher McGaugh (resigned), Tom Evans (current)

[Signature]
Director/Department Head’s Signature

Oct. 27, 2021
Date

**For Finance Use Only**
Grant funding for 12 months has been verified for this position.  ☐ Yes   ☑ No*
If no, please list the amount of time funding is available.

[Signature]
Finance Director Signature

9/30/22
Date

**For CS Use Only**
Comments:

[Signature]
Civil Service Director

[Date]

Vicki Hatfield, PhD, Civil Service Director

On behalf of the Civil Service Merit Board

Author Note

This report only addresses those EEO functions under the authority of the

Civil Service Merit Board
AUTHORITY FOR EXISTING POLICIES

STATE LAW

State law requires that a municipality adopt, maintain, and make available to the public its personnel policies on these topics, including EEO and sexual harassment.

T.C.A. 6-54-123. Personnel policies.

On or before July 1, 1998, any municipality, incorporated before June 13, 1997 that has not adopted a personnel policy by ordinance, resolution, or otherwise, shall adopt such a policy that applies fairly, impartially, and uniformly, to the extent practicable, to each department of the municipal government. The policy may include, but not be limited to, hiring procedures, benefits, personnel rules and regulations, fair and reasonable complaint conferences and hearing procedures for employees dismissed, demoted, or suspended; procedures for compliance with federal laws such as, but not limited to, the Fair Labor Standards Act and the Americans with Disabilities Act; drug and alcohol testing policy; and a sexual harassment policy. The policy may not grant a property right or contract right to the job to any employee. The municipality may work with the University of Tennessee Municipal Technical Advisory Service, in cooperation with the Tennessee Municipal League, in developing its policy. A copy of the resolution or ordinance adopting the policy, or its caption, shall be published in a newspaper of general circulation in the municipality before final adoption of the policy. A copy of the personnel policy as required by this section shall be kept in the office of the city recorder or clerk and made available to an employee on request. Any municipality incorporated after June 13, 1997 shall have two (2) years after incorporation to adopt and implement a personnel policy pursuant to this section.
CHARTER

The City Charter places responsibility for development and provision of the Equal Employment Opportunity program of the City of Knoxville with the Civil Service Merit Board (CSMB) with regard to all aspects of employment, including receiving complaints of racial/sexual harassment and discrimination. It also establishes the authority to investigate these complaints, administer oaths, and issue subpoenas. It requires the CSMB to have rules regarding investigations.

1003. Civil service merit board.

(F) Powers and duties. The powers and duties of the civil service merit board shall be as follows:

(4) To make any investigation which it deems necessary concerning the administration of personnel under the authority of this charter with the power to administer oaths and to secure, by subpoena, in the name of the city, the attendance and testimony of witnesses and the production of records and papers relevant to such investigations.

(8) To hear allegations of any persons on matters of discrimination in hiring, transfer or promotion, neglect of duty, or other violations of merit system principles as established by the charter.

(11) To develop a program to provide for equal employment opportunities to all employees and applicants for employment with regard to all aspects of employment.

(G) Civil service merit board rules. After public hearing, the board shall specify rules as to the conduct of investigations, hearings, the exemption of positions, eligibility and promotion list, examinations, procedures, employee appeals of disciplinary action and such other matters as are necessary for the execution of its powers and duties. The board shall review said rules periodically for the purpose of revision in a manner appropriate to sound personnel policies and shall hold public hearings prior to the adoption or revision of the rules. At least ten (10) days prior to any such hearings, public notice shall be given in a daily newspaper of general circulation, and to each department of the city, including the Knoxville Utilities Board. The board shall arrange for the printing and distribution of its rules.

Charter provision 231 specifies that such authority vested by the charter is deemed exclusive jurisdiction:

231. Departments, boards, commissions, offices, agencies.

The City of Knoxville shall have power to create, alter and or abolish by ordinance any departments, boards, commissions, offices and agencies, and to confer upon the same the necessary and appropriate authority for carrying out all their powers, including the promulgation of rules and
regulations or codes; but when any power is vested by this charter in any specific officer, board, commission or any other agency, the same shall be deemed to have exclusive jurisdiction within that particular field.

Charter provision 234 specifies that the City shall have the power to make investigations.

234. Investigations.
The City of Knoxville shall have power to make such investigations as may be deemed necessary or proper as to any department or office, or as to any of the city's institutions, activities, or affairs; and in furtherance of this power the mayor, the council or any person or committee authorized by either or both of them, shall have the power to inquire into the conduct of any department, office or institution of the city, its activities or affairs, or those of its employees, and for that purpose shall have the power to subpoena witnesses, administer oaths, compel the production of books, papers and other evidence, and the council shall provide, by ordinance, penalties for contempt in refusing to obey any such subpoenas, or to produce any such books, papers or other evidence, and shall have the power to punish any such contempt as provided by ordinance by appropriate fine and, if necessary, to commit such delinquent witness to jail until said witness shall have been purged of the contempt.

CITY CODE ORDINANCES

In addition to placing the EEO function with an appointive member of the CSMB, Chapters 2 and 15 of the City Code specifies some general rules and policies with regard to Equal Employment. These provisions are consistent with CSMB Rules and Regulations.

Section 2-3 of the City Code establishes that the Mayor shall issue an equal employment policy in conjunction with the CSMB. It authorizes the Mayor to establish rules except those enacted by the CSMB. It authorizes the Mayor, or her designee, to investigate the affairs or operations of a department. It gives the Mayor the power to delegate the duties of any department to another department provided it is consistent with the CSMB Rules and Regulations.

Sec. 2-3. Mayor.
The mayor shall be the chief executive and administrative officer of the city government, shall enforce the laws of the city and require the faithful performance of all administrative duties, and shall have the following powers and duties:

(1) Duties.
j. **Equal employment and affirmative action.** The mayor, in conjunction with the civil service merit board, will issue an equal employment and affirmative action policy, and carry out the city's plan to provide equal employment and affirmative action in all employment practices.

(2) **Powers.**

a. **Rules for administrative agencies.** The mayor shall have the power to prescribe such rules and regulations as the mayor shall deem necessary or expedient for conduct of administrative agencies subject to his authority, and the mayor shall have the power to revoke, suspend or amend any rule or regulation of the administrative service, by whomever prescribed, except those enacted by council and by the civil service merit board.

b. **Investigations.** The mayor shall have the power, either by himself or by any officer or person designated for the purpose by him with the concurrence of city council, to investigate and to examine or inquire into the affairs or operation of any department, division, bureau or office, and to employ consultants and professional counsel to aid in such investigations, examinations or inquiries.

d. **Delegation of duties.** The mayor shall have the power to direct any department, office, division or bureau to perform the work for any other department, office, division or bureau; such delegation to be consistent with the provisions of the Charter, applicable city ordinances, and the rules and regulations of the civil service merit board.

Section 2-111 of the City Code states that the Office of Community Relations shall function as the City’s Equal Employment Officer, however this is in conflict with provisions 1003. (F) and 231 of the City Charter and Sections 2-3 and 15-53 of the City Code.

**Sec. 2-111. Departmental organization; mayor's office.**

(c) The office of the mayor shall also consist of the following administrative offices and any other such administrative offices as the mayor may from time to time direct:

(1) **Office of community relations.** The office of community relations shall be under the direction and control of administrative assistants/managers appointed by the mayor and shall perform the following functions:

b. Function as the city's equal employment officer to administer the city's equal employment program with the objective of ensuring compliance with the equal employment laws and related executive orders.

Chapter 15 of the City Code, in compliance with the Charter, specifies that responsibility for carrying out and enforcing the EEO provisions of the City shall be an appointive member of the CSMB staff. Currently, the Civil Service Director is the only appointive member of the CSMB
staff, and this duty has defaulted to the Civil Service Director since the 1990s when the CSMB appointed position of EEO Officer was eliminated by the Administration in the budget. Chapter 15 goes on to specify specific powers of the enforcing officer, i.e. the Civil Service Director. These powers include monitoring all employment practices to ensure EEO compliance; investigating any charges of unlawful employment practices under EEO; protecting employees/applicants from discrimination; and the authority to issue, amend, or rescind suitable procedural regulations relative to EEO.

**Sec. 15-51. Definitions.**

(a) The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Disability** means, with respect to an individual:

1. A physical or mental impairment that substantially limits one (1) or more major life activities, as defined by the Americans with Disabilities Act (hereinafter referred to as "ADA"), of such individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment as set forth in the ADA.

**Employee** means an individual employed by the city, except that the term "employee" shall not include any person elected to public office in the city government by the qualified voters, or any person chosen by such elected official to be on the elected official's personal staff, or an appointee on the policy-making level or an immediate adviser with respect to the exercise of the legal powers of the office. This exemption does not include other employees of the city or employees subject to civil service laws of the city.

**Ethnic origin** means an individual's actual or perceived heritage and common ancestry or shared historical past, as well as identifiable physical, cultural, or linguistic characteristics.

**Gender identity** means the actual or perceived gender-related identity, appearance, or mannerisms, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

**Genetic information** means information about an individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. "Genetic information" also includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. "Genetic information" shall not include information about the sex or age of any individual.
*Genetic test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. "Genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

*Qualified individual* means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. It shall be within the city's judgment as to what functions of a particular job are essential.

*Religion* includes all aspects of religious observance and practice, as well as belief, unless the city demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practices without undue hardship on the conduct of the city's business.

*Sexual orientation* means actual or perceived homosexuality, heterosexuality, or bisexuality.

(b) The phrase "unlawful employment practice," as used in this division, shall not be deemed to include any action or measure taken by the city with respect to an individual who is a member of the communist party of the United States or any other organization required to register as a communist-action or communist-front organization by final order of the subversive activities control board pursuant to the Subversive Control Act of 1950, or any other organization classified as "communist fronted" or "subversive" on any list of such organizations published or to be published by the United States Department of Justice or any similar agency.

### Sec. 15-52. Effect of division on special rights of veterans.

Nothing in this division shall be construed to repeal or modify any charter provisions or city ordinance creating special rights or preferences for veterans.

### Sec. 15-53. Enforcing officer—Generally.

Responsibility for carrying out and enforcing the provisions of this division shall be placed with the person designated by the mayor to carry out the functions and purposes of this division, who shall be an appointive member of the civil service board staff. Such person shall maintain close and direct liaison with the civil service merit board in order that matters of common concern may be given prompt and proper attention; and such person shall provide responsible and effective leadership in the area of equal employment opportunity by close contact, coordination and communication with department heads and other heads of divisions and bureaus.

### Sec. 15-54. Same—Powers.

The person designated by the mayor to carry out the functions and purposes of this division, or his designated representative, shall have the power to:

1. Administer and enforce the provisions of this division.
2. Monitor all employment practices of the city to ensure compliance with the provisions of this division.
3. Investigate any charges of unlawful employment practices.
(4) Upon request of any director or other employing agency of the city, assist in effecting the provisions of this division by conciliation or such other remedial action as required by this division.

(5) Issue subpoenas to seek enforcement of this division as part of any investigative procedures.

(6) Issue subpoenas and enforce or seek enforcement during hearings on the merits of a charge of employment discrimination.

(7) Ensure that no excessive burdens be placed on a complainant which might discourage filing of complaints.

(8) Protect persons from discrimination in employment on all grounds covered by this division.

(9) Furnish to persons subject to this division such technical assistance as they may request to further their compliance with this division or orders used by such person or his designated representative.

Sec. 15-55. Same—Authority to issue, amend or rescind procedural regulations.

The person designated by the mayor to carry out the functions and purposes of this division shall have authority to issue, amend or rescind suitable procedural regulations to carry out the provisions of this division, including establishment of an affirmative action program to ensure equal employment practices as contemplated by this division.

Sec. 15-56. Filing of charges; investigation; action on charges; appeals.

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved alleging that a director or any other employing agency of the city has engaged in an unlawful employment practice, the person designated by the mayor to carry out the functions and purposes of this division shall serve a notice of the charge, to include the date, place and circumstances of the alleged unlawful employment practice, within five (5) days of receipt of the charge, to the director or employing agency of the city alleged to be in an unlawful employment practice. Within ten (10) days after serving notice, the designated enforcement person or his duly authorized representative will make an investigation of the charges. If it is determined after reasonable investigation that there is no reasonable cause to believe that the charges are true, the designated enforcement person shall dismiss the charges and promptly notify the aggrieved person in writing. If the designated enforcement person or his duly authorized representative determines after investigation that there is reasonable cause to believe that the charge is true, he shall endeavor to eliminate any such alleged unlawful employment practice by the informal methods of conferences, conciliation and persuasion. Such informal actions will not be made public without the written consent of the persons concerned. Any person who makes such information public is subject to immediate dismissal. If the charges cannot be resolved through informal endeavor, the enforcement person shall make known his written findings within thirty (30) days of the date upon which notice was given to the director or employing agency as provided in this section. If there is an unlawful employment practice, the director or employing agency of the city in violation thereof will be prohibited from any further employment of any further personnel until the provisions of this division are complied with. The findings of the enforcement person may be appealed to the civil service merit board within five (5) days, whose ruling within ten (10) days thereafter shall be final without recourse.
Sec. 15-57. Unlawful employment practices generally.

It shall be an unlawful employment practice for the city to discriminate against a qualified individual on the basis of non-merit factors such as race, ethnic origin, color, national origin, gender, gender identity, genetic information, sexual orientation, age except as otherwise specifically provided in this part, religion, creed, or disability in admission to, access to, or operations of its programs, services, or activities. Discrimination against any qualified individual in recruitment, examination, appointment, training, promotion, demotion, retention, discipline, or any other employment practices because of non-merit factors shall be prohibited.

Sec. 15-58. Unlawful practices in training programs.

It shall be an unlawful employment practice in any apprentice training program, employee retraining program, or on-the-job training program to discriminate against any qualified individual on the basis of race, ethnic origin, color, national origin, gender, gender identity, sexual orientation, age except as otherwise specifically provided in this part, religion, creed, or disability.

Sec. 15-59. Religion or sex as bona fide occupational qualification; affirmative action plans.

(a) It is not a discriminatory practice for:

(1) The city to employ employees;

(2) The city to classify or refer for employment any individual;

(3) The city to classify its members or to classify or refer for employment any individual; or

(4) The city or joint training or retraining programs to admit or employ any individual in any such program;

on the basis of religion or sex in those certain instances where religion or sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(b) It is not a discriminatory practice for the city to adopt and carry out a plan to fill vacancies or hire new employees so as to eliminate or reduce imbalance with respect to race, creed, color, religion, sex, age or national origin, if the plan has been filed with the city and the city has not disapproved the plan.

Sec. 15-60. Age discrimination.

(a) It shall not be unlawful for the city:

(1) To discriminate in employment on the basis of age where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; or

(2) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this division, except that no such employee benefit plan shall excuse the failure to hire any individual and no such seniority system or employee benefit plan
shall require or permit the involuntary retirement of any individual specified by T.C.A. § 4-21-101(b) because of the age of such individual, unless otherwise provided by law.

(b) The prohibitions imposed by this division relating to age discrimination in employment shall be limited to individuals who are at least forty (40) years of age.

(c) Notwithstanding any other provisions of this division relating to age discrimination in employment, it shall not be unlawful for the city to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this division, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual covered by this division because of the age of such individual.

(d) Nothing in this division relating to age discrimination shall be construed to prohibit compulsory retirement of any employee who has attained sixty-five (65) years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least forty-four thousand dollars ($44,000.00).

(e) Nothing in this division shall be construed to prohibit compulsory retirement of any employee who has attained seventy (70) years of age and who is serving under a contract of unlimited tenure, or similar arrangement providing for unlimited tenure, at an institution of higher education.

(f) It shall not be unlawful for the city to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken:

(1) With respect to the employment of an individual as a firefighter or a police officer and where the individual has attained the age of hiring or retirement in effect under applicable state or local law on March 3, 1983; and
(2) Pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this division.

The provisions of this subsection (f) shall not apply with respect to any cause of action arising under the federal Age Discrimination in Employment Act of 1967 as in effect before January 1, 1987 (29 U.S.C. § 621 et seq.).

Sec. 15-61. Refusal to hire or discharge of individual in interest of national security.

It shall not be an unlawful employment practice for the city to fail or refuse to hire and employ any individual for any position or discharge any individual from any position if:

(1) The occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any executive order of the president; and
(2) Such individual has not fulfilled or has ceased to fulfill that requirement.
Sec. 15-62. Application of standards relating to compensation or terms of employment; use of test results.

It shall not be an unlawful employment practice of the city to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to seniority, a merit system or any system the city may have which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, creed, color, religion, sex, age or national origin, nor shall it be an unlawful employment practice for the city to give and to act upon the results of any professionally developed and properly validated ability test, provided that such test and its administration or action upon the results is not designed, intended or used to discriminate because of race, creed, color, religion, sex, age or national origin. It shall not be unlawful for the city to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of the city if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 USC 206(d)).

Sec. 15-63. Preferential treatment to individuals or groups not required.

Nothing in this division shall be interpreted to require the city to grant preferential treatment to any qualified individual or to any group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, ethnic origin, color, national origin, gender, gender identity, sexual orientation, age, religion, creed, or disability employed by the city in comparison with the total number or percentage of persons of such race, ethnic origin, color, national origin, gender, gender identity, sexual orientation, age, religion, creed, or disability.

Sec. 15-64. Discrimination against person opposing unlawful practice or participating in investigation or hearing.

It shall be an unlawful employment practice for the city to discriminate against any employee or applicant for employment because he has opposed any practice made an unlawful employment practice by this division, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this division.

Sec. 15-65. Notices or advertisements relating to employment.

It shall be an unlawful employment practice for the city to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification or discrimination based on race, creed, color, religion, sex, age or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex or national origin when religion, sex or national origin is a bona fide occupational qualification for employment.
RULES AND POLICIES

CIVIL SERVICE MERIT BOARD RULES AND POLICIES

Additionally, as required by Charter, the CSMB Rules and Regulations have rules specific to EEO and investigations. Article 3 of the CSMB Rules and Regulations states the EEO policy and Article 17 specifies the procedures to be followed with regard to complaints and investigations under EEO.

Article 3 – Equal Employment/Affirmative Action Plan

SECTION 301. It is the policy of the City of Knoxville to provide equal opportunity in employment to all employees and applicants for employment. No person will be discriminated against in employment because of race, religion, color, sex, age, national origin, disability, or military status.

SECTION 302. The City shall establish, implement, and maintain an Affirmative Action Plan which shall have the ultimate goal of making available all levels of employment within the City government structure to all persons who can perform the required duties regardless of age, race, religion, creed, national origin, sex, or for qualified persons with disabilities, or any other legally protected status. The goal of the Affirmative Action Plan is not to bias the process in favor of any group. It is to eliminate city procedures that may work against people who have background or other characteristics different from the majority. This plan shall be consistent with Section 1003 (f) (11) of the City Charter, which states that the Board has the power and duty to “develop a program to provide for equal employment opportunities to all employees and applicants for employment with regard to all aspects of employment.” Copies of the Affirmative Action Plan shall be made available upon request to all City employees. Section 1003 (f) (8) gives to the Board the power and duty to “hear allegations of any persons on matters of discrimination in hiring, transfer or promotion…”.

SECTION 303. No applicant seeking admission to the civil service eligibility register of the City or who is on the civil service eligibility register of the City shall be discriminated against or favored in any way because of race, national origin, disability, or sex; or because of political or religious opinions; provided however, that no member of a political party advocating overthrow of the Government of the United States by force shall be permitted to take an examination or be placed on the civil service eligibility register of the City of Knoxville.

Article 17 – Civil Service Investigations

17.01 Authority
Pursuant to the City of Knoxville Charter, Article X. Sections 1003. (F) and (G) and the City of Knoxville Code, Chapter 15. Section 15-53 and 15-54, the Civil Service Merit Board has the authority and responsibility to hear allegations of discrimination with regard to personnel practices, to conduct any investigation it deems necessary into matters of personnel administration, and to specify rules as to the conduct of investigations.

17.02 Purpose
The City of Knoxville (the “City”) prohibits discrimination in employment on the basis of race, color, sex, age, religion, national origin, and disability. The City will take all necessary steps to comply with existing federal and state fair employment laws and guidelines. The City is committed to providing a work environment that is free of discrimination.

In keeping with this commitment, the City maintains a strict policy prohibiting sexual harassment or any other harassment based on a protected class such as race, color, disability, national origin, age, sex, or religion. Any unlawful harassing conduct in the workplace, whether committed by supervisors or non-supervisory employees, is strictly prohibited.

17.03 Employee Complaints of Discrimination and/or Harassment
Any employee who believes he or she has been the subject of discrimination or harassment due to his or her sex, race, religion, age, national origin, color or disability should submit a written complaint of the alleged act immediately to the Civil Service Director. Upon request by the affected employee, the Board staff shall assist him/her with the transcription of the complaint as needed. In the alternative, the written report may be made to the Director of Law. If such a report is made by an employee to any supervisor, Director, or Senior Director, the party to whom the report and written complaint has been made must notify the Civil Service Director or the Director of Law as soon as possible. If the employee making the complaint does not believe his or her complaint is being addressed, the employee should immediately report this situation directly to the Civil Service Director or, in the alternative, to the Director of Law.

If deemed necessary upon review by the Civil Service Director, an investigation of the complaint will be undertaken by the Civil Service Director, or alternatively the Director of Law, as soon as possible after the report is made. This investigation may include, but is not limited to, interviews of witnesses and an examination of relevant documents. A summary report of facts will be submitted by the Civil Service Director, or Director of Law, to the Mayor, Department Head of the accused employee, and the Director of Law.

17.04 Investigation Procedures
Upon receipt of a written complaint by an employee who believes he or she has been the subject of discrimination or harassment due to his or her sex, race, religion, age, national origin, color or disability, the Civil Service Director shall serve a notice of the complaint, to include the date, place, and circumstance of the allegation(s) as soon as is practicable to the Department Head of the department alleged to be responsible for the discrimination or harassment, to the Director of Law, and to the Mayor.
After serving notice, the Civil Service Director shall make an initial review of the charges as soon as is practicable. If it is determined upon initial review that the circumstances are not appropriate for the investigation process, a written explanation shall be provided to the complainant and shall be copied to the Department Head of the department alleged to be responsible for the discrimination or harassment, to the Director of Law and to the Mayor.

If it is determined upon initial review that the circumstances are appropriate for the investigation process, a Civil Service investigation shall be initiated as soon as is practicable. Civil Service investigations shall be conducted by the Civil Service Director and shall include an attorney from the Law Department to serve as co-investigator and witnesses to the investigation. A member of KPD Internal Affairs Unit or another trained member of the Civil Service staff may also serve as a co-investigator at the request of the Civil Service Director on an as-needed basis. Investigations shall include, but are not limited to, any or all of the following: interviews of the complainant and the accused, interviews of witnesses, and review of relevant documents. Pursuant to the City of Knoxville Charter, Article X., Section 1003. (F) (4), the Civil Service Board shall have the power to administer oaths and to secure, by subpoena, in the name of the City, the attendance and testimony of witnesses and the production of records and papers relevant to any investigation which it deems necessary concerning the administration of personnel. To the extent possible, scheduling of interviews shall be coordinated with the Department Head of the employee being interviewed so that work flow is not disrupted. To the extent practicable, interviews will be taped. As may be appropriate, City employees questioned will be presented with, and have explained to them, a Garrity Warning which states that City employees questioned as part of a Civil Service investigation are compelled to answer questions or be subject to disciplinary action, up to termination and that no information provided by a City employee as part of a Civil Service investigation may be used against him/her in a criminal matter.

At the conclusion of the fact finding process, a Summary Report of Facts shall be submitted by the Civil Service Director to the Mayor, Department Head of the accused employee, and the Director of Law for judgment and disciplinary considerations. The Civil Service Director shall also submit a letter to the complainant advising him/her that the investigation is complete.

All investigations will be conducted in the most sensitive manner possible, however, complete confidentiality cannot be guaranteed.

17.05 Non-Retaliation Policy

There shall be no retaliation against an employee who brings any good faith complaint of unlawful harassment or discrimination or against any employee who provides good faith testimony or evidence as required during an investigation.
CITY ADMINISTRATIVE RULES

In conjunction with the CSMB, the Mayor issues an equal employment and affirmative action policy in 1.05 and 1.06 the Administrative Rules and reiterates verbatim Article 17 Investigations of the CSMB Rules and Regulations as part of that policy.

1.05 NON-DISCRIMINATION

The City of Knoxville prohibits discrimination in employment on the basis of non-merit factors such as race, color, gender, age, religion, national origin, ethnic origin, gender identity, sexual orientation, creed, genetic information, and disability. The City will take all necessary steps to comply with existing federal and state fair employment laws and to provide freedom from discrimination in employment practices for all persons identified in this rule to the same extent as those protected classifications under federal and state law. Discrimination against any qualified individual in recruitment, examination, appointment, training, promotion, demotion, retention, discipline, or any other employment practices because of non-merit factors shall be prohibited.

1.06 HARASSMENT POLICY

The City is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the City maintains a strict policy prohibiting sexual harassment or any other harassment based on a protected class such as race, color, gender, age, religion, national origin, ethnic origin, gender identity, sexual orientation, creed, genetic information, and disability. All forms of harassment are strictly prohibited.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to, the following:
• The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex, but he/she must have been subjected to harassment because of the victim’s sex.
• The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
• The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
• Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
• The harasser's conduct must be unwelcome.
Harassment based on a legally protected class, including race, color, gender, age, religion, national origin, ethnic origin, gender identity, sexual orientation, creed, genetic information, and disability may also constitute unlawful harassment and is strictly prohibited by the City. For example, derogatory or degrading remarks, jokes, objects or pictures, or negative commentaries about a person’s race, color, gender, age, religion, national origin, ethnic origin, gender identity, sexual orientation, creed, genetic information, or disability are strictly prohibited.

Any employee who believes he or she has been the subject of harassment due to his or her race, color, gender, age, religion, national origin, ethnic origin, gender identity, sexual orientation, creed, genetic information, or disability should submit a written complaint of the alleged act immediately to the Civil Service Director. In the alternative, the written report may be made to the Director of Law. If such a report is made by an employee to a supervisor, Director, or Senior Director, the party to whom the report has been made must notify the Civil Service Director or the Director of Law as soon as possible. Supervisors must report harassment as a condition of employment. Failure to report known harassment may result in disciplinary action. If deemed necessary by the Civil Service Director, the Civil Service Director or alternatively the Director of Law or their representatives will work with Police Internal Affairs to make an investigation of the complaint immediately after the report is made. This investigation may include, but is not limited to, interviews of witnesses and examination of relevant documents. A summary report of facts will be submitted by the Civil Service Director or Director of Law to the Mayor and the Department Head of the accused employee.

There will be no retaliation against an employee who brings a good faith complaint of unlawful harassment or against any employee who provides good faith testimony or evidence during an investigation.

After the investigation of the complaint has been completed, and where the facts support the allegations made in the complaint, appropriate disciplinary action will be taken, up to and including termination. During any investigation, the City may also take any temporary action necessary to prevent further harassment until the investigation is completed and permanent action can be taken.

This policy shall be reviewed from time to time by the Director of Law.

**EXISTING PRACTICES**

While formal rules and policies are provided to demonstrate the basis for our practices, the following explains the practices of the Civil Service Office with regard to harassment and discrimination in more colloquial terms.
Complaints and Investigations

As required by Charter, Code, and both the Civil Service and City Administrative Rules, complaints of discrimination and/or harassment are to be reported to the Civil Service Director either by the complainant or by another party if that complaint is first brought to them (e.g., Internal Affairs, Department Head, Supervisor, Law Department). The Civil Service Director discusses the initial complaint with the Law Department. If the allegations as reported would constitute a violation of race or sex policies, an investigation is initiated by the Civil Service Director to see if the allegations are supported or not. Upon the receipt of such a complaint and initiation of an investigation, the Civil Service Director notifies the Department Head, the Law Director, and the Mayor. Civil Service investigations are initiated and completed as quickly as is practical.

Investigations are conducted by the Civil Service Director, or her designee, in cooperation with an attorney from the Law Department. A representative from KPD Internal Affairs might also be involved if appropriate and requested by the Civil Service Director. The investigation will typically include interviews with the complainant, any potential witnesses, and with the individual the complaint is against, as well as any document production necessary to support the investigation.

At the conclusion of a complete investigation, the Civil Service Director, or her designee, prepares a summary that provides the complaint, the allegations, a summary of facts found, and whether or not any allegations were supported. The summary is signed off on by the attorney from the Law Department that participated in the investigation as a true representation of the facts found. This summary is sent to the Department Head, the Law Director, and the Mayor. The complainant is notified that the investigation is complete.

At this point, Civil Service does not play a role in making any determination about whether or not a rule, policy, or law was violated, nor does it play a role in making disciplinary
recommendations. Civil Service only serves as a neutral 3rd party to find the facts. Civil Service is not involved in the process after the summary is completed and is not involved in action taken following an investigation, unless an appeal or grievance is filed relative to such action.

In addition to being responsible for complaints and investigations that are related to race/sex discrimination and harassment, other practices that are part of Civil Service’s EEO role with regard to racism/sexism include:

- Provision of equal employment opportunities in hiring practices.
- Use of expanded certification to expand applicant referrals where minorities and/or women are underrepresented.
- Until June 2020, the Civil Service Department provided mandatory training in harassment and discrimination for all employees. At the time that the training function was moved from Civil Service to HR, 100% of active employees had participated in this training.
- Until June 2020, provision of additional mandatory harassment and discrimination training for all supervisors.
- Until June 2020, maintenance of diversity statistics for all aspects of city employment and provision of a quarterly report to the Mayor. At this time, Civil Service is continuing to track diversity metrics only related to recruitment and hiring and providing those to the Administration through the Mayor’s Internal Equity and Diversity Committee on a bi-annual basis.
- Serve as a member of the Mayor’s Internal Equity & Diversity Committee since its inception in 2016.
RECOMMENDATIONS

Civil Service welcomes the opportunity to work with City Council, the Mayor and her staff, the Law Department, and the HR Department to look at areas for improvement. Creating a welcoming, inclusive, and safe work environment, where everyone can do their best work, is a minimum standard that we can hold ourselves to as a City. While we do have current policies, reporting, and investigation processes created to discourage and address workplace harassment at the City, there is always room for improvement. Some initial recommendations for Civil Service’s responsibilities are below:

- **Data Collection**: Despite policies and procedures in place to address complaints and concerns, anecdotal feedback provided to Civil Service during investigations indicates that many employees are hesitant to report discrimination or harassment due to fear of retaliation, lack of trust in the process, or lack of information. Civil Service should gather data to identify gaps, disparities, misperceptions, or barriers to reporting harassment and discrimination.
  
  - **Create an Index of Complaints and Outcomes**: Civil Service can create an index/summary of complaints that have been received in Civil Service (general information only not to include names or specific information) in the past 15 years. While Civil Service only participated in the investigative portion, the Law Department should have information relating to the outcome, i.e., remedial action, disciplinary action, etc. This index of investigations and whether or not allegations were supported could be provided to the Law Department so that they can provide the final disposition. This would allow the City to review departmental response to investigations and would allow the City to monitor and track such responses going
forward to ensure appropriate action is taken. This would establish a reporting tool that would provide some transparency to address any concerns of inaction following a complaint or an investigation of that complaint.

- **Survey Employees**: Civil Service can gather data from employees via surveys, focus groups, etc. to assess issues like how well employees understand what constitutes a reportable offense, how well employees understand how to report a complaint, barriers to employee reporting, employee perceptions of existing complaint and investigations processes, pervasiveness of incidents of harassment/discrimination witnessed or experienced by employees on the job (witnessing or experiencing), etc. This data will help identify areas that might need to be addressed in policies and procedures.

- **Policy Review/Update**: The Civil Service Director and CSMB should review existing CSMB rules and determine if updates are recommended with regard to reporting and investigation procedures. Administrative Rules should also be reviewed by the Administration and Law Department for CSMB overlap created when the Civil Service Director had responsibility for both sets of rules and to identify areas where new or modified Administrative Rules might be needed to address areas not under the authority of the CSMB (e.g., how to handle complaints/investigations that are not illegal harassment/discrimination from employees such as bullying or complaints from non-employees, what procedures are followed at the conclusion of the Civil Service investigation, etc.). Collectively, we should ensure each set of rules addresses its part of the process and does so as effectively as possible.
• **Implementation and Communication**: Once areas of need are identified and existing policies/procedures/rules are updated, Civil Service should develop and implement a consistent, Civil Service complaint reporting system and launch a comprehensive communication program to ensure employees know how to use complaint and investigations procedures. This should include a variety of communication resources to include training sessions to ensure employees and supervisors know what constitutes a reportable offense and how to report it; a roll out of a complaint reporting system; and updated resources, tools, information, and procedures to be provided to employees via email, on the Civil Service intranet, and on the Civil Service website.

We hope this information has been helpful. We look forward to working collaboratively with the City to support efforts to address workplace discrimination and harassment with the goal of ensuring respectful and equitable treatment and protection of all our employees.