

Code Ordinance

By: Human Resources
Introduced: September 26, 2016
Public Hearing: October 10, 2016
Adopted: October 10, 2016

Vote: Burney, Harvey, Graham, O'Barr, Sullivan-Leonard, Wilson in favor

**City of Wasilla
Ordinance Serial No. 16-22**

An Ordinance Of The Wasilla City Council Amending Wasilla Municipal Code Chapter 3.75, Disciplinary Action, Related To The Process For Removing Disciplinary Actions From A Personnel File.

Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the city code.

Section 2. Amendment of Section. WMC 3.75.010, General Policy, is hereby amended to read as follows:

The mayor or his or her designee will advise and assist department heads in the handling of all disciplinary matters. An employee may not be provided with notice of intent to suspend **without pay**, demote, or terminate without advance approval of the mayor. All terminations, and procedures utilized to terminate employees will be made in conjunction with attorney consultation and review. Discipline, up to and including termination, of a new, promoted, or rehired employee during a probationary period shall be governed by Section 3.50.070~~(C)~~(F) of these rules instead of this Chapter 3.75. Discipline, up to and including termination, of confidential/managerial employees shall be governed by Section 3.85.030 of these rules instead of this Chapter 3.75. **Any form of discipline administered under this Chapter is exempt from the grievance procedure in Chapter 3.70.**

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Section 3. Amendment of Section. WMC 3.75.030, Oral Reprimands, Written Reprimands, and Suspensions with Pay, is hereby amended to read as follows:

(A) Oral reprimands, written reprimands, and suspensions with pay ~~may~~ **shall** be administered without a pre-disciplinary hearing. Oral reprimands, written reprimands, and suspensions with pay will be documented on a discipline action form (**report**) and ~~should~~ **will** be maintained in the **employee's central personnel file and a copy may be maintained in the** departmental-employee evaluation file ~~described in Section 3.90.020(A)(2).~~ **The mayor shall be notified of the disciplinary action taken.** The employee shall be given an opportunity to review the report with his or her department head. **The employee will be required to sign the report. Signing the report shall be construed only as an acknowledgement of receipt, and will not be considered an admission of wrongdoing by the employee or an agreement by the employee.** If the employee disagrees with the facts or conclusions contained in the report, ~~he or she~~ shall be **the employee will be** permitted to submit, **a statement of disagreement** within five ~~working~~ **business** days after reviewing the report with ~~his or her~~ **the employee's** department head, ~~a statement of disagreement.~~ The statement shall clearly and concisely set forth the employee's reasons for disagreeing with the report. ~~One copy of the~~ **The** employee's statement shall be appended to the report and ~~shall become a part of it.~~

(B) ~~If the employee has no~~ **The report will note whether the employee made a** comment or ~~has not~~ responded within the required time frame, ~~it shall be so noted~~ and the report shall **then** be forwarded to ~~the mayor~~ **the**

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human resources department. The original report will generally be maintained in the employee's central personnel file in the human resources department and a copy may be retained in the department evaluation file. Disciplinary action reports ~~which~~ concerning employees who have separated from city service shall remain a part of the central personnel files.

(C) The department head may, if appropriate, complete periodic reviews of the employee's progress in correcting the cause of the original discipline. Progress ~~Saeh~~ reports shall be made a part of the employee's central personnel file and may be retained in the department evaluation file.

(D) An employee may request a discipline action report be removed from his or her personnel file as follows:

(1) Oral and Written Reprimands. Not earlier than 12 months after the date in which the discipline action report was issued.

(2) Suspensions with Pay. Not earlier than 24 months after the date in which the discipline action report was issued, except that if the allegations made against the employee that warranted the suspension with pay are found to be unsubstantiated, the report shall immediately be removed from the employee's central personal file and department evaluation file.

(E) A request to remove a discipline action report shall be submitted to the employee's department head, in writing, signed and dated by the employee. If there have been no further disciplinary actions of any type during the preceding 12-month period for oral and written reprimands

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or the preceding 24-month period for suspensions with pay, the discipline action report may be removed from the employee's department evaluation file and the employee's central personnel file, within five business days of the date of the employee's written request. The employee shall be informed in writing as to the removal of the discipline action report. Once the discipline action report is removed from the employee's central personnel file and the employee's department evaluation file, the report cannot be used or referenced in future disciplinary proceedings.

(F) A copy of the employee's request must be maintained by the human resources department and may not be destroyed for the length of the employee's service plus six years or the time required by the current city retention schedule.

Section 4. Amendment of Section. WMC 3.75.040, Suspension Without Pay, Demotion or Dismissal, Disciplinary Hearings, is hereby amended to read as follows:

(A) A suspension without pay, demotion, or a disciplinary dismissal, of an employee who is disciplined in accordance with this chapter, shall be accomplished and reviewed only in accordance with the procedures stated in this section.

(B) Before any department head may dismiss, demote, or suspend an employee without pay, the employee shall receive written notice of intent to dismiss, demote, or suspend without pay (hereafter referred to in this section as "discipline") containing a reasonably specific statement of the basis for the intended discipline and a notice of the employee's entitlement to request a hearing

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with the mayor at which time such intended discipline will be reviewed. **A copy of the written notice will be provided to the mayor.**

(C) The procedures for a pre-discipline hearing, if requested by the employee subject to discipline, shall be as follows:

(1) The hearing shall be before the mayor. The mayor may appoint a designee to hold the hearing and provide a written report containing finding of facts and recommending a final decision to the mayor. The mayor may accept, modify, or reject the designee's recommendation, and shall issue a final decision.

(2) The employee's request for a hearing must be in writing, signed by the employee (or representative or legal counsel of the employee), and delivered to the mayor's office within five ~~working~~ **business** days of receipt of the notice of intent to discipline described in Subsection (A) of this Section. The employee's failure to request a pre-discipline hearing within the time and manner provided shall be deemed a waiver of ~~his or her~~ **the employee's** right to a hearing, and to any ~~appellate~~ **further** review to which ~~he or she~~ **the employee** might have otherwise been entitled, ~~and in such an event the discipline, described in the notice of intent to discipline, shall be final.~~ **If an employee waives pre-disciplinary review, the city will implement the discipline described in the notice of intent.**

(3) If the employee ~~duly delivers his or her requests~~ for a hearing, the mayor or his or her designee (collectively referred to in this section as "mayor") will hold a hearing within 15 ~~working~~ **business** days from the date of receipt of the request unless the date for the hearing is extended **by the mayor.**

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Absent exceptional circumstances, ~~It~~ **in** no event will the hearing occur more than 30 **calendar** days following the employee's request for a hearing ~~absent exceptional circumstances~~. The mayor shall notify the employee of the date, time, and place of the hearing.

(4) The employee, at his or her own expense, may be represented by legal counsel or another person of the employee's choice.

(5) At the request of the employee, the hearing may be open to the public.

(6) All testimony shall be under oath. The proceedings shall be ~~tape~~ **audio** recorded. Upon written request, the employee is entitled to a copy of the ~~tape~~ **audio recording** at no charge. The employee or the employee's representative, the city's representative, and the mayor may question witnesses **and introduce evidence**. ~~Exhibits may be introduced.~~ The hearing shall be informal, and the Alaska Rules of Evidence shall not apply. However, the mayor may **will** exercise appropriate controls over the proceeding and the evidence presented, and irrelevant or unduly repetitious evidence shall be excluded.

(7) The mayor shall determine the order of presentation at the hearing. The hearing shall, at a minimum, include the following:

- (a) Brief opening statement by the city;
- (b) Brief opening statement by the employee;
- (c) Presentation of evidence by city;
- (d) Presentation of evidence by the employee;
- (e) Rebuttal as necessary;
- (f) Argument by city;

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- (g) Argument by employee;
- (h) Rebuttal argument by city; and
- (i) Surrebuttal argument by employee.

(D) The city shall prove, by a preponderance of the evidence, that just cause exists to carry out the intended discipline, and then the employee must prove, by a preponderance of the evidence, that the city does not have just cause to carry out the intended discipline.

(E) Unless ~~ordered~~ **the mayor orders** otherwise ~~by the mayor~~, the employee shall continue to be paid pending issuance of the mayor's decision.

(F) The mayor shall exercise independent judgment as to the weight of the evidence presented by the parties.

(G) The mayor shall issue a written decision no later than ~~14~~ **15 working business** days after the close of the hearing. The decision shall include findings of fact and a statement of the reason(s) for the decision.

(H) If the mayor ~~denies the existence of~~ **does not find** just cause to support the recommended discipline, ~~he or she~~ **the mayor** may then impose a lesser form of discipline ~~for the conduct at issue at the hearing~~ or may determine that no discipline of any nature shall be imposed.

(I) The written decision will be placed in the employee's central personnel file and a copy may be retained in the departmental ~~performance appraisal~~ **evaluation** file.

(J) The mayor has the authority to negotiate separation agreements as a result of disciplinary action separations.

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(K) The affected employee may appeal the mayor's decision by filing a written notice of appeal with the Alaska Superior Court for the Third Judicial District at Palmer in accordance with the Alaska Rules of Appellate Procedure. ~~The Superior Court shall have no jurisdiction to hear the appeal unless the employee files the~~ A notice of appeal **must be filed** within 30 **calendar** days after the employee's receipt of the mayor's decision. ~~The Superior Court shall limit its~~ **Appellate** review ~~of the decision~~ **is limited** to whether or not substantial evidence exists, in light of the whole record, to support the mayor's decision.

(L) Disciplinary actions which have been the subject of a pre-discipline hearing may not be disputed by the grievance procedure provided in ~~these personnel rules~~ **this chapter**.

(M) **An employee may request that the suspension described in this section be removed from the employee's central personnel file not earlier than 24 months after the first day the employee returns to work after a suspension. The request shall be submitted to the employee's department head, in writing, signed and dated by the employee. The department head shall deliver his or her decision to the employee in writing within 14 business days of the date of the employee's request. The decision to remove the suspension from the employee's central personnel file is made solely at the discretion of the department head. A copy of the employee's request and the department head's decision shall be delivered to the mayor and to the human resources department and placed in the employee's central personnel file and a copy may be retained in the department evaluation file.**

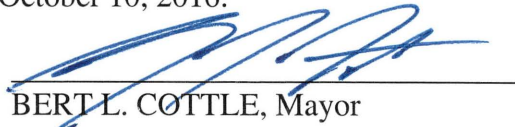
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(N) If the department head denies the employee's request to remove records of a suspension described in Subsection (M) of this Section, the employee may appeal the decision by submitting a written request for reconsideration to the mayor, signed and dated by the employee, and delivered to the mayor's office, within five business days of the date of the department head's decision. If an employee duly delivers his or her request for reconsideration of the department head's decision, the mayor shall review the request and issue a written decision no later than 14 business days from the date of the reconsideration request. The decision shall include findings of fact and statement of the reason(s) for the decision. The decision of the mayor is final and may not be appealed. A copy of the final decision shall be distributed to the employee, the employee's department head, and the human resources department for placement in the employee's central personnel file. A copy may be retained in the department evaluation file.

(O) All disciplinary actions are the property of the city and may not be destroyed for the length of service plus six years or the time required by the current city retention schedule.

Section 5. Effective date. This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on October 10, 2016.


BERT L. COTTLE, Mayor

ATTEST:

JAMIE NEWMAN, MMC, City Clerk

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CITY OF
WASILLA
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CITY COUNCIL LEGISLATION STAFF REPORT

Ordinance Serial No. 16-22: An Ordinance Of The Wasilla City Council Amending Wasilla Municipal Code Chapter 3.75, Disciplinary Action, Related To The Process For Removing Disciplinary Actions From A Personnel File.

Originator: Donna Faeo, Human Resources Generalist 
 Date: 9/14/2016 Agenda of: 9/26/2016

Route to:	Department Head	Signature	Date
X	Finance Director		9.14.16
X	Deputy Administrator		9/14/16
X	City Attorney		
X	City Clerk		9/14/16

Reviewed by Mayor Bert L. Cottle:  09/14/2016

Fiscal Impact: yes or no **Funds Available:** N/A

Account name/number: N/A

Attachments: Ordinance Serial No. 16-22 (9 pages)

Summary Statement: The proposed ordinance serves to adopt language outlining the process for removal of disciplinary actions from employee's personnel files.

Staff Recommendation: Introduce and set the ordinance for public hearing Ordinance Serial No. 16-22.