



	Approved	Denied
Date Action Taken:	10/10/11	
Other:	Cemended - see page 2.	
Verified by:	[Signature]	

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 11-27

TITLE: DIRECT ADMINISTRATION TO ADJUST THE MAYOR'S RATE OF PERSONAL TIME OFF IN ACCORDANCE WITH WMC 3.65.020.C BASED ON YEARS OF SERVICE, RETROACTIVE TO NOVEMBER 3, 2008, AND TO ADJUST ACCURED LEAVE IN ACCORDANCE WITH THE FORFEITURE PROVISIONS OF WMC 3.65.020.J.

Agenda of: October 10, 2011

Date: September 27, 2011

Originator: Council Member Dianne Woodruff [Signature]

Route to:	Department	Signature/Date
X	Human Resource Generalist	
X	Finance Director	
X	Deputy Administrator	
X	City Clerk	[Signature]

REVIEWED BY MAYOR VERNE E. RUPRIGHT: _____

FISCAL IMPACT: yes\$ or no

Funds Available yes no

Account name/number:

Attachments: WMC Code Sections: 2.16.070 and 3.65.020 (4 pp)
 Pay Stub of Verne Rupright, June 17, 2011 (1 p)
 Memo from D. Faeo dated August 16, 2011 (1 p)

SUMMARY STATEMENT: WMC 2.16.070.C. states that the Mayor shall receive employee benefits as provided to all permanent employees of the City.

WMC 3.65.020.C.1 states, that the accrual rate for Paid Time Off (PTO) for employees who hold full-time positions is 12 hours per month for employees with less than three years. Currently, the Mayor is accruing PTO at the rate of 20 hours per month, rather than 12 hours per month as set forth by this code section.

Further, WMC 3.65.020.J requires employees to use a minimum of 60 hours of PTO during each fiscal year and that any portion of the 60 hour minimum not used during the fiscal year will be forfeited unless the employee has been denied on three separate occasions, the opportunity to use PTO due to the City's operational needs.

COUNCIL MEMBER RECOMMENDATION: Direct the Finance Director and Human Resource Generalist to:

- Change the accrual rate for the Mayor's PTO to ¹⁶12 hours per month;
- Retroactively adjust the amount of accrued leave to reflect ¹⁶12 hours per month from the date of taking the Oath of Office for the Office of Mayor, November 3, 2008; and
- ~~Adjust the appropriate forfeiture for Fiscal Year 2010 and Fiscal Year 2011.~~

*Amended per Council 10/10/11.
H. Smith*

Chapter 2.16

MAYOR

2.16.070 Salary of mayor.

A. The council shall determine the salary for the mayor by resolution at least ninety (90) calendar days prior to the regular election for the office of mayor using the salary grade and step matrix. When determining the appropriate step for the mayor's salary, the council may base the wage on prevailing wages in similar sized Alaskan municipalities. A mayor who is elected to a second term of office will not be subject to a new placement on the salary grade and step matrix and shall progress to the next step effective on November 1st of each year. If a special election for the office of mayor is held to fill an unexpired term of office, the salary shall be at the first step of the salary grade and step matrix.

B. The salary of the mayor may be reduced voluntarily at the mayor's discretion. A decision of the mayor to reduce the salary is not binding upon or applicable to future administrations. The salary of the mayor may not be reduced by council action during a mayor's term.

C. The mayor shall receive employee benefits as provided to all permanent employees of the city. (Ord. 09-56(AM)(SUB) § 2, 2009; Ord. 07-35 § 2, 2007; prior code § 2.16.060)

Chapter 3.65

PAID TIME OFF AND OTHER LEAVE

3.65.010 Eligibility for paid time off (“PTO”).

Paid time off (“PTO”) is provided to employees who hold regular full-time, part-time, and seasonal positions as well as employees who hold confidential/managerial positions. Employees in all other positions do not accrue PTO. PTO is prorated depending upon the amount of hours an employee who is eligible for PTO is regularly scheduled to work. For example, an employee who regularly works forty (40) hours per week will receive one hundred (100) percent of the monthly PTO accrual set forth in Section 3.65.020(C). An employee who works thirty (30) hours per week will receive seventy-five (75) percent of the monthly PTO accrual set forth in Section 3.65.020(C). (Ord. 03-33(SUB)(AM) § 2 (part), 2003)

3.65.020 Coverage, use, accrual, and other aspects of PTO.

A. Coverage and Use of PTO. Employees are required to use PTO hours for vacations; illness; injury; medical and dental examinations or treatment; necessary care of an employee’s child, spouse, or parent due to illness or injury; bereavement; maternity leave; and for all other personal needs as approved by the employee’s supervisor.

B. Requesting PTO. PTO must be scheduled at least thirty (30) days in advance. For an absence due to sudden illness or other unanticipated events, employees must telephone their supervisor or a designated representative of management as soon as possible prior to the time the employee is scheduled to report for work. Employees may be required to take PTO if, in the opinion of the department head, they are too ill to satisfactorily perform their duties or are a health hazard to other employees. Approval of PTO for vacation and nonurgent needs will be scheduled with due consideration of other employee schedules and the needs of the city. Approval of PTO is prioritized according to date of submission and urgency. Department heads will maintain a PTO schedule for employees in their sections to ensure employees are granted fair opportunity to take PTO. Failure to provide proper notification or repeated absences not in compliance with the city’s PTO plan may result in disciplinary action up to and including termination.

C. Accrual of PTO. PTO shall not begin to accrue until the first day of the first full month following an employee’s date of hire. The accrual rate for employees who hold full-time positions is:

1. Twelve (12) hours per month for employees with less than three years;
2. Sixteen (16) hours per month for employees with three years and less than eight years;

3. Twenty (20) hours per month for employees with eight years or more.

For the purposes of this subsection, the length of service of a former employee who is rehired after a period of active duty military service or after layoff shall include the period of employment before the active duty military service or layoff, respectively.

D. The accrual rate for employees who hold part-time and seasonal positions is prorated as provided for in Section 3.65.010.

E. The city reserves the right in its sole discretion to grant PTO during a probationary period to an employee who is ill, merit-based awards of additional PTO, or increases in the accrual rate in individual cases based on performance.

F. PTO shall not accrue during any pay period in which an employee is absent without written authorization of the department head or the mayor. PTO shall accrue during any pay period in which an employee is absent with written authorization, but is in nonpaid status for not more than seven calendar days or forty (40) work hours within a calendar year.

G. PTO accrues only upon completion of each month of service and does not begin to accrue until the first day of the first full month following an employee's date of hire.

H. An employee does not accrue PTO during the first three months of the probationary period for a regular full-time, regular seasonal or regular part-time position. However, if the employee is still employed by the city at the end of the first three months of the probationary period, he or she will be credited with PTO retroactive to his or her date of hire and may begin to use his or her PTO at that point in time.

I. Changes in the rate of accrual because of length of service shall take effect at the beginning of the month immediately following the date upon which such longevity results in an accrual rate change.

J. Forfeiture, Carryover, Cash Out, and Maximum Accrual. Employees are encouraged to use their available PTO during each fiscal year. Employees are required to use a minimum of sixty (60) hours of PTO during each fiscal year. Any portion of the sixty (60) hour minimum not used during the fiscal year will be forfeited unless the employee has been denied, on three separate occasions, the opportunity to use his or her PTO because of the city's operational needs. Any remaining time over the sixty (60) hour minimum will be carried over to the next fiscal year. Employees are permitted to carry over PTO hours from year to year until a maximum of seven hundred twenty (720) hours of PTO has accrued. Any accrued PTO in excess of the seven hundred twenty (720) hour maximum shall be paid out at one hundred (100) percent at the end of each fiscal year. In addition, the mayor may from time to time announce opportunities for employees to receive one hundred (100) percent cash payment for PTO yet to be accrued in the remaining fiscal year. Such opportunities to elect to cash out prospective PTO may occur no more frequently than two times per fiscal year. Employees shall be given thirty (30) days' notice of such PTO payment opportunities. Employee cash out elections shall be irrevocable once made until the end of the fiscal year, or until the date the mayor announces another opportunity to

make a prospective cash out election. There are no limits on the amount of prospective (not yet accrued) PTO that may be cashed out during the election period; provided, that the employee retains at least eighty (80) hours of accrued PTO for future use by the employee. Employees electing to receive cash payment for their accrued PTO shall be required to retain at least eighty (80) hours of PTO for future use, and shall only receive payment for actual hours accrued during the designated period. The eighty (80) hours may not be donated to others under subsection M of this section.

K. No Advances. PTO shall not be advanced. Employees must have accrued sufficient PTO to cover absences in order to receive PTO pay. Employees are responsible for saving adequate PTO to ensure their ability to attend to illnesses, appointments or other nonvacation purposes for which PTO is intended. The city will not automatically grant unpaid leave to satisfy employees' unforeseen PTO needs.

L. Termination of Employment. Once final notice has been submitted, a resigning employee is not permitted to use any PTO during the final two weeks of work. The mayor in his or her sole discretion may elect to allow an employee to use PTO in lieu of performing services during the final two weeks of work. The employee shall be paid for the employee's accrued and unused PTO that has not previously been forfeited or cashed out under subsection J of this section, at the salary rate which is being received by the employee on the last day of employment.

M. Donation of PTO to Other Employees. Employees may donate PTO to a fellow employee if approved by the mayor. Requests for permission to donate PTO shall be approved only in the most serious cases such as probability of death, lingering or incurable illness, extended recovery or some truly exceptional emergency. A donation of PTO or banked sick leave shall be deemed to run concurrently with, and shall not augment any period of unpaid leave to which the employee may otherwise be entitled. (Ord. 09-44 § 9, 2009; Ord. 07-14 § 2, 2007; Ord. 05-41 § 2, 2005; Ord. 05-40(AM) § 2, 2005; Ord. 04-46(AM) § 2, 2004; Ord. 03-33(SUB)(AM) § 2 (part), 2003)

EMPLOYEE: VERNE E. RUPRIGHT						
RUPRIGHT		Rate: 3,564.27		Direct Deposit Date: 6/17/11		Net:
EARNINGS		QUANTITY	CURRENT	DEDUCTIONS		YEAR TO DATE
HOLIDAY PAY			356.43			
REGULAR			3207.87			
Gross			3564.30			
ACCRUAL	EARNED	USED	BALANCE			
VAC	20.000		600.000			
				YTD GROSS	YTD W2 WAGES	YTD SS WAGES



Verne E. Rupright
Mayor

WASILLA
HUMAN
RESOURCES
DEPARTMENT
City of Wasilla

290 E. Herning Ave
Wasilla, AK 99654

907.373.9035
Fax: 907.373.9039
www.cityofwasilla.com

RECEIVED

AUG 16 2011

OFFICE OF THE CITY CLERK
CITY OF WASILLA

Date: August 16, 2011

To: Kristie Smithers, City Clerk

From: Donna Faeo, Human Resources Generalist

DFaeo

Subject: Public Records Requests, Patricia Fisher, 8/2/2011

Kristie,

Ms. Fisher's request dated 8/2/2011 requested the number of Paid Time Off Hours taken by Verne Rupright for the fiscal years 2009, 2010 and 2011, as shown on the accrued leave schedule, as prepared for the audit schedules, for those years. The pay stub for June 17, 2011.

Mayor Rupright has taken 32 hours Paid Time Off (PTO) during fiscal year 2010. No other PTO was taken for fiscal years 2009 and 2011.

Regarding the request for pay stub for June 17, 2011, see attached pay advice.


If you have any questions, please contact me directly at (907) 373-9038.


DENALI LAW GROUP
PETERSEN & PAYNE, LLC

360 NORTH MAIN ST.
WASILLA, ALASKA 99654

JON-MARC PETERSEN
RICHARD K. PAYNE
DONALD "ROY" ROISTACHER

TELEPHONE (907) 357-5297
FACSIMILE (907) 357-5296

To: Wasilla City Council Members
Thru: Kristi Smithers, Wasilla City Clerk
From: Richard K. Payne, Denali Law 
Subject: Paid time off
Date: October 3, 2011

RECEIVED
OCT 03 2011
OFFICE OF THE CITY CLERK
CITY OF WASILLA

Question:

The Wasilla City Clerk requested a legal memorandum discussing the interplay of several Wasilla Municipal Code provisions as they relate to paid time off for the Mayor of Wasilla.

Introduction:

Paid time off ("PTO") is provided to employees who hold regular full-time, part-time, and seasonal positions as well as employees who hold confidential/managerial positions. Employees in all other positions do not accrue PTO. Wasilla Municipal Code ("WMC") 3.65.020 discusses the coverage, use, accrual, and other aspects of PTO. Pursuant to WMC 3.65.020, PTO begins to accrue on the first day of the first full month following an employee's date of hire. The accrual rate for employees who hold full-time positions is:

1. Twelve (12) hours per month for employees with less than three years;
2. Sixteen (16) hours per month for employees with three years and less than eight years;
3. Twenty (20) hours per month for employees with eight years or more.

Relevant Municipal Code Provisions:

WMC 2.16.070 Salary of Mayor

- A. The council shall determine the salary for the mayor by resolution at least ninety (90) calendar days prior to the regular election for the office of mayor using the salary grade

and step matrix. When determining the appropriate step for the mayor's salary, the council may base the wage on prevailing wages in similar sized Alaskan municipalities. A mayor who is elected to a second term of office will not be subject to a new placement on the salary grade and step matrix and shall progress to the next step effective on November 1st of each year. If a special election for the office of mayor is held to fill an unexpired term of office, the salary shall be at the first step of the salary grade and step matrix.

- B. The salary of the mayor may be reduced voluntarily at the mayor's discretion. A decision of the mayor to reduce the salary is not binding upon or applicable to future administrations. The salary of the mayor may not be reduced by council action during a mayor's term.
- C. *The mayor shall receive employee benefits as provided to all permanent employees of the city.*¹

WMC 3.45.010 Definitions

When used in this title, the following words and phrases shall have the meanings set forth in this section:

"Classified employees" means those employees who hold positions in the classified service of the city.

"Classified service" means all positions except for elective offices, the city clerk, the city attorney, temporary, intern, and nonregular hourly positions, positions filled by the mayor on a contractual basis, and confidential/managerial positions.

"Confidential/managerial positions" means those positions listed in Section 3.85.010(B) *or specifically designated by the mayor pursuant to Section 3.85.010(B) that are exempt from the classified service.*²

WMC 3.45.020 Administration.

- A. The mayor shall have overall authority and responsibility for personnel administration and may delegate aspects of this function as he or she determines is appropriate. In addition to the responsibilities specified elsewhere in these rules, the mayor's duties include:
 - 1. Advise city employees and officials on all matters pertaining to the administration of personnel. In this capacity, the mayor has final responsibility for interpretation and enforcement of these rules;

¹ Emphasis added.

² Emphasis added.

*** **

- 5. Develop and maintain a salary administration plan;

*** **

- 11. Maintain a position control system based on the budget as approved by the city council;

WMC 3.45.040 Scope of coverage and amendment of rules.

- A. These rules shall apply to all employees except that:

*** **

- 2. The mayor is elected and shall be compensated in the manner provided for in Section 2.16.070. The mayor shall receive the same benefits as those provided to employees who have obtained a regular appointment to a city position;

WMC 3.65.020 Coverage, use, accrual, and other aspects of PTO

- E. *The city reserves the right in its sole discretion to grant PTO during a probationary period to an employee who is ill, merit-based awards of additional PTO, or increases in the accrual rate in individual cases based on performance.*³

*** **

- J. Forfeiture, Carryover, Cash Out, and Maximum Accrual. Employees are encouraged to use their available PTO during each fiscal year. Employees are required to use a minimum of sixty (60) hours of PTO during each fiscal year. *Any portion of the sixty (60) hour minimum not used during the fiscal year will be forfeited unless the employee has been denied, on three separate occasions, the opportunity to use his or her PTO because of the city's operational needs.* Any remaining time over the sixty (60) hour minimum will be carried over to the next fiscal year. Employees are permitted to carry over PTO hours from year to year until a maximum of seven hundred twenty (720) hours of PTO has accrued. Any accrued PTO in excess of the seven hundred twenty (720) hour maximum shall be paid out at one hundred (100) percent at the end of each fiscal year. In addition, the mayor may from time to time announce opportunities for employees to receive one hundred (100) percent cash payment for PTO yet to be accrued in the remaining fiscal year. Such opportunities to elect to cash out prospective PTO may occur no more frequently than two times per fiscal year. Employees shall be given thirty (30) days' notice of such PTO payment opportunities. Employee cash

³ Emphasis added.

out elections shall be irrevocable once made until the end of the fiscal year, or until the date the mayor announces another opportunity to make a prospective cash out election. There are no limits on the amount of prospective (not yet accrued) PTO that may be cashed out during the election period; provided, that the employee retains at least eighty (80) hours of accrued PTO for future use by the employee. Employees electing to receive cash payment for their accrued PTO shall be required to retain at least eighty (80) hours of PTO for future use, and shall only receive payment for actual hours accrued during the designated period. The eighty (80) hours may not be donated to others under subsection M of this section.⁴

WMC 3.85.010 Scope

- A. This chapter shall apply to the positions listed in this section. In the event any provision of this chapter conflicts with any other provision of Title 3, the provisions of this chapter shall govern.
- B. *The following positions are confidential/managerial positions:*
 - 1. *Chief of police;*
 - 2. *Recreational and cultural services manager;*
 - 3. *Finance director;*
 - 4. *Public works director;*
 - 5. *Deputy administrator; and*
 - 6. *Executive assistant to the mayor.*⁵

WMC 3.85.060 Benefits

- A. Confidential/managerial employees shall receive all benefits provided to classified employees who hold regular appointments.
- B. *A confidential/managerial employee's paid time off accrual rate may be adjusted upward by the mayor as part of the employee's overall compensation.*⁶

⁴ Emphasis added.

⁵ Emphasis added.

⁶ Emphasis added.

Discussion:

Pursuant to WMC 2.16.070(C), the Mayor shall receive employee benefits as provided to all permanent employees of the city. A somewhat similar provision in WMC 3.45.040 indicates that the Mayor shall receive the same benefits as those provided to employees who have obtained a regular appointment to a city position.

WMC 3.65.020 indicates that the accrual rate for employees who hold full-time positions is: 1. Twelve (12) hours per month for employees with less than three years; 2. Sixteen (16) hours per month for employees with three years and less than eight years; 3. Twenty (20) hours per month for employees with eight years or more.

Therefore, without any other considerations, every Mayor should initially receive 12 PTO hours per month; unless the Mayor has more than three years of service with the City of Wasilla.

The following is a discussion of how one may attempt to interpret the Wasilla Municipal Code to receive additional PTO when he or she has less than three years of accrued service with the City of Wasilla.⁷

1. Mayor's Ability to Adjust PTO Pursuant to WMC 3.85.060

According to WMC 3.85.060(B) a confidential/managerial employee's paid time off accrual rate *may be adjusted upward by the mayor as part of the employee's overall compensation*. WMC 3.85.010 appears to limit confidential/managerial employees to those positions listed in WMC 3.85.010(B)(1)-(6). WMC 3.85.010(B)(1)-(6) defines the following positions as confidential/managerial positions:

1. Chief of police;
2. Recreational and cultural services manager;
3. Finance director;
4. Public works director;
5. Deputy administrator; and
6. Executive assistant to the mayor.⁸

All of these positions are at-will positions and none of them are elected public servants. The Office of the Wasilla City Mayor is not on the list contained in WMC 3.85.010(B)(1)-(6).

However, after reviewing WMC 3.45.010, the list of "confidential/managerial employees" contained in WMC 3.85.010(B)(1)-(6) does not appear to be exhaustive. WMC 3.45.010 defines "confidential/managerial positions" as those positions listed in Section 3.85.010(B) ". . . *or specifically designated by the mayor* pursuant to Section 3.85.010(B) *that are exempt from the*

⁷ I do not support these methods of interpretation. I simply have reviewed the relevant code provisions in an attempt to understand how the code may be interpreted.

⁸ WMC 3.85.010(A): specifically directs that "[i]n the event any provision of this chapter conflicts with any other provision of Title 3, the provisions of this chapter [85] shall govern."

classified service.”⁹ WMC 3.45.010 is a poorly worded definition, but WMC 3.45.010 does appear to grant the Mayor the authority to create additional “confidential/managerial employee” positions beyond those positions listed in WMC 3.85.010(B)(1)-(6) which the Mayor could then adjust the PTO upward for these new or additional confidential/managerial employee positions.

Therefore, it is possible, that one could argue that the Mayor could add the Mayor’s Office to the list of confidential/managerial employees.

2. Mayor’s Ability to Adjust PTO Pursuant to WMC 3.65.020(E)

In addition to the authority granted the Mayor in WMC 3.85.060, WMC 3.65.020(E) *states the city reserves the right in its sole discretion to grant merit-based awards of additional PTO or increase the accrual rate in individual cases based on performance.* Pursuant to WMC 3.45.020, the mayor shall have overall authority and responsibility for personnel administration. The mayor’s duties also include develop and maintain a salary administration plan and to maintain a position control system based on the budget as approved by the city council.

Therefore, again, it is possible, that one could argue that the Mayor could add the Mayor’s Office to the list of confidential/managerial employees.

3. Forfeiture, Carryover, Cash Out and Maximum Accrual of PTO

Pursuant to WMC 3.65.020(J) employees are required to use a minimum of sixty (60) hours of PTO during each fiscal year. Any portion of the sixty (60) hour minimum not used during the fiscal year will be forfeited *unless the employee has been denied, on three separate occasions, the opportunity to use his or her PTO because of the city’s operational needs.* Any remaining time over the sixty (60) hour minimum will be carried over to the next fiscal year. There is no provision that specifically addresses who determines if a Mayor should have used his or her PTO or whether the Mayor was denied the use of his or her PTO on three separate occasions because he or she needed to attend to the city’s operational needs.

Therefore, one could argue that the Mayor denied his own PTO request three times and therefore was denied the opportunity to use his or her PTO because of the city’s operational needs.

Conclusion:

Given the time constraints imposed, due to public notice concerns, I have had only a limited opportunity to research the legislative intent of the ordinances discussed and presented herein. Therefore, it is possible that a past City Council intended to provide the Mayor with wide authority when it comes to the allocation of PTO. However, it does not seem likely that there will be any legislative discussion regarding the intent to permit the Office of the Mayor to control his or her own PTO allocation.

⁹ “Classified service” means all positions *except for elective offices*, the city clerk, the city attorney, temporary, intern, and nonregular hourly positions, positions filled by the mayor on a contractual basis, and confidential/managerial positions.”

Legislative history was located regarding establishing the Mayor's salary, Ordinance 09-56(AM)(SUB) and 09-26. After reviewing this legislative history, it is clear the Council was unwilling to place the Mayor's pay range in range 25. There was clear discussion that the Council would not allow for the possibility that a Mayor could alter his or her own pay scale along with positions contained in range 25. The Council instead placed the Mayor's pay range in its own range, range 26, preventing a Mayor from having control over his own salary.

Therefore, the legislative history that was located discussed an unwillingness to allow the Office of the Mayor the sole discretion to alter his or her own salary. It is unlikely, that any discussion will be located in a legislative history review that varies greatly from this line of thinking.

I would recommend the Wasilla City Code be amended to reflect the intent of the Council and to refine the language to make the directive clearer.