

RESOLUTION NO. 26612

A RESOLUTION TO AMEND RESOLUTION NOS. 21194 AND 22112, AND ADOPTING ADMINISTRATIVE REGULATIONS FOR CONDUCT OF EMPLOYEE DISCIPLINARY HEARINGS.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Resolution Nos. 21194 and 22112 be and are hereby repealed.

BE IT FURTHER RESOLEVED, that new Administrative Regulations for Conduct of Employee Disciplinary Hearings be and are hereby adopted as set forth below:

**ADMINISTRATIVE REGULATIONS FOR  
CONDUCT OF EMPLOYEE DISCIPLINARY HEARINGS**

**1. Imposition of Discipline Procedure.**

The Mayor, Department Head, or their designee (hereafter referred to as "Executive") shall provide a pre-disciplinary hearing prior to a dismissal, demotion, or suspension of an employee for cause. When the Executive concludes that such discipline is warranted, the employee shall be notified in writing that demotion, termination, or suspension is being imposed. The letter shall advise the employee of their right, when applicable, to appeal the dismissal by filing a request for a hearing with the Clerk of the City Council (hereafter referred to as "Clerk").

**2. Request for Hearing and Scheduling.**

An employee appealing from a dismissal, demotion, or suspension shall file a written request for a hearing with the Clerk within fifteen (15) days following the action taken against the employee. In the event that the employee requests a hearing, the Clerk shall notify the Tennessee Secretary of State's Administrative Procedures Division (hereafter referred to as "APD") and request assignment of an Administrative Law Judge (hereafter referred to as "ALJ") to conduct a hearing on the employee's request for a hearing.

If the APD is not able to appoint an ALJ or if there is a conflict of interest, then the Chair of the City Council (hereafter referred to as "Chair") shall appoint an ALJ, who shall be a Tennessee licensed attorney, to conduct a hearing on the employee's request for a hearing. A list of attorneys willing to serve in this function will be maintained by the Clerk and the Chair shall designate an attorney from the list. In the absence of or the inability of the Chair to act, the City Council Vice-Chair shall appoint an ALJ to conduct the personnel hearing.

The ALJ to whom a case is assigned may convene the parties for a scheduling conference within fifteen (15) or as soon as practical and shall set a hearing date within ninety (90) days of the date the employee's written request for a hearing is filed with the Clerk unless the employee and the City agree otherwise or for good cause shown. The hearing date may be re-set by agreement of the parties or for cause. The ALJ assigned to conduct a personnel hearing shall provide the Clerk with the hearing date. The Clerk shall issue notice of the hearing date to the employee, Department, ALJ and all other interested parties. The Clerk shall make arrangements for a suitable hearing location.

Should the department or employee fail to appear at and participate in a scheduled hearing, the ALJ may in its discretion take such action as is warranted by the circumstances, including dismissal of the appeal, reversal of the disciplinary action, or to adjourn the proceedings to a future date.

### **3. Duties of the ALJ.**

The ALJ shall preside at such hearing, rule upon questions of the admissibility of evidence, and otherwise conduct the hearing to insure that the proceedings are carried out in accordance with the City's Charter and other applicable law. The Executive who initiated the discipline shall be considered a party to the disciplinary hearing. The ALJ shall, upon motion of

either party or upon its own motion, rule upon procedural question of law prior to the hearing date. The ALJ shall regulate the course of the proceeding.

**4. Subpoena for Witnesses.**

Upon request of any party, and to the extent permitted by law, the ALJ shall issue subpoenas (subpoena forms attached as Exhibit No. 1) as directed to persons to attend and give testimony at the hearing. A subpoena may be issued for deposition for proof when authorized by these policies. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein; but the ALJ, upon request or motion shall promptly but in any event at or before the time specified in the subpoena for compliance therewith may: (1) quash or modify the subpoena if it is unreasonable or repressive; or, (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, and documents or other tangible things. The subpoena will be issued to the person requesting the subpoena for service by any person authorized to serve process, or the witness may acknowledge service in writing upon the subpoena. Delivery may be made by mail with proof of service being a return receipt or an affidavit made by the person mailing the subpoena. A proper return showing proof of service shall be made upon the subpoena or by separate affidavit.

**5. Ex Parte Communication.**

Unless required for disposition of procedural questions, the ALJ shall not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication. No party to a contested case, and no other person, shall communicate directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with the ALJ without notice and opportunity for all parties to participate in the communication.

If the ALJ receives an *ex parte* communication in violation of this section the ALJ shall place in the record of the pending matter all written communications received, written responses to communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received *ex parte* communication, and shall advise all parties that these matters have been placed on the record.

**6. Pre-Hearing Conference.**

The ALJ may upon his or her own motion, or upon motion of one of the parties or their qualified representative, direct the parties and/or the attorneys for the parties to appear for a conference to consider:

- a. Simplification of the issues;
- b. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- c. Provide for pre-hearing exchange of documents or exhibits. The employee or the Executive may object to the pre-hearing dissemination of particular documents on grounds other than hearsay, and the ALJ may rule on such objections;
- d. Provide for written preliminary statements of the parties stating their positions as to facts and law relating to the disciplinary action;
- e. Possible limitation of redundant witnesses or proof, and
- f. Such other matters as may aid in the disposition of the action.
- g. In the event of such a hearing, the ALJ shall make an order which shall recite the action taken at the conference and the agreements made by the parties as to any matters considered, and any limitation upon proof to be received at said hearing.

Such pre-hearing conferences may be conducted by telephone or other electronic means.

**7. Depositions.**

No discovery depositions are available. A deposition may be taken for proof to perpetuate the testimony of any person who is not available to testify in person. The party desiring to perpetuate the testimony of such a witness shall give five (5) days notice to the other party of the date and time of the taking of the deposition, which shall be taken in Hamilton County, Tennessee; all of which is subject to waiver by the other party or procedural order by the ALJ. Such depositions may be taken by telephone in substantial accord with Rule 30.02 Tennessee Rules of Civil Procedure.

**8. Discovery of Records.**

Any party to a contested case shall have the right to inspect the ordinary business records and files of the City of Chattanooga with respect to the matter at issue and copy therefrom, except that records may not be inspected or copied the confidentiality of which is protected by statute or rule of law.

Unless modified by an order of the ALJ, the parties shall exchange at least seven (7) days prior to the hearing the names and addresses of witnesses, documents or other tangible evidence which is to be offered at the hearing, except rebuttal witnesses, documents or evidence.

**9. Order of Proof.**

The parties shall be afforded the opportunity to make either written or oral opening arguments.

The Executive shall first go forward with his proof and shall bear the burden of proof by a preponderance of the evidence to show a reasonable basis for the employment decision and on the issue of cause for the disciplinary action and compliance with Charter provisions relating to discipline based upon impermissible political or religious reasons. Upon the conclusion of the

Executive's proof, the employee shall have the opportunity to call witnesses and present proof. Following the direct examination of witnesses, the witness shall be cross-examined by the other party, and the witness shall be subject to re-direct and re-cross. The ALJ may ask the witnesses such questions as are necessary to clarify that witness' testimony, but shall not inquire into matters not presented by either party.

#### **10. Rules of Evidence - Affidavits - Official Notice.**

To the extent necessary for full disclosure of all relevant facts and issues, the parties shall be afforded the opportunity to present relevant evidence, the opportunity to conduct cross-examination of witnesses and the opportunity to submit rebuttal evidence. The ALJ shall admit and give probative effect to evidence admissible in a court and when reasonably necessary to ascertain facts not reasonably susceptible to proof under the rules of the court, evidence not admissible there under may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The ALJ shall give effect to the rules of privilege recognized by law and to any statutory protection of confidentiality of certain records and shall exclude evidence which in the ALJ's judgment is irrelevant, immaterial, or unduly repetitious.

##### **10.01 Affidavits.**

In the event a person is not subject to subpoena, a party may upon not less than five (5) days' notice prior to the hearing propose to present that person's proof by affidavit. In the event the opposing party desires to cross-examine the affiant, said party may at its election submit cross-examination questions to be answered in writing or at the opposing party's election require that a deposition be taken instead. If the affiant does not fully respond to such cross-examination questions or deposition, the affidavit shall not be admitted into evidence. Nothing herein shall preclude the admission of an affidavit not taken in accordance herewith in the event there is no objection thereto or where necessary to prevent injustice.

### **10.02 Documentary Evidence.**

Documentary evidence otherwise admissible may be received in the form of copies or excerpts, with a copy available upon request, and the parties shall be given an opportunity to compare the copy with the original, if reasonably available.

### **10.03 Official Notice.**

Official notice may be taken of (a) any fact that could be judicially noticed in the courts of this State; (b) records of other proceedings before the City Council or Executive; (c) technical matters within the ALJ's specialized knowledge; and (d) codes or standards that have been adopted by an agency of the United States, this State or another State, by the City of Chattanooga, or by a nationally recognized organization or association. If either party shall ask the ALJ to take judicial notice, that party shall, as soon as practicable before the hearing, notify the other party of the specific facts or materials to be noticed and the source thereof. The other party shall be afforded an opportunity to contest and rebut the facts or materials so noticed.

### **11. Argument.**

At the conclusion of the proof each party may present a closing statement or argument to the ALJ, subject to reasonable time constraints established by the ALJ.

### **12. Final Decision.**

If the ALJ finds that the employment decision was made upon a reasonable basis, the ALJ shall affirm the Executive's decision. The ALJ may reverse or modify the Executive's decision if the ALJ finds that there was not a reasonable basis for the Executive's decision. The ALJ shall issue a final written decision within twenty (20) days after the conclusion of the hearing. The final decision shall include conclusions of law, the policy reasons therefore, findings of facts for all aspects of the decision, and a statement of available procedures and time limits for seeking reconsideration or judicial review.

**13. Reconsideration.**

The Department or employee, within fifteen (15) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. However, the filing of a request for reconsideration shall not be a prerequisite for seeking judicial review. A party shall respond to the request within ten (10) days. The ALJ shall issue a written decision on the request for reconsideration within thirty (30) days of the request.

**14. Appeal.**

Any decision of the ALJ shall be the final decision of the City Council. Any party aggrieved by the ALJ's decision shall have the right to seek judicial review in the Hamilton County Chancery or Circuit Courts within sixty (60) days of the final decision pursuant to T.C.A. § 27-9-101, *et seq.*

ADOPTED: March 1, 2011.

KOF/MAM/mms/add