

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION," ARTICLE V, "HUMAN RESOURCES," OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (1986), AS AMENDED, BY REVISING SECTION 2-181, "DISMISSAL, SUSPENSION OR DEMOTION," TO CLARIFY THE EMPLOYEE DISCIPLINARY PROCESS; REPEALING SECTIONS 2-182, 2-183, AND 2-184; ENACTING A NEW SECTION 2-182 TO GOVERN THE DISCIPLINARY APPEAL PROCESS; ENACTING A NEW SECTION 2-183 TO ESTABLISH CRITERIA FOR SELECTION AND SERVICE OF NEUTRAL HEARING OFFICERS; ENACTING A NEW SECTION 2-184 TO CHARGE THE CITY MANAGER WITH ADOPTING PERSONNEL RULES AND REGULATIONS; AND AMENDING CHAPTER 2, "ADMINISTRATION," ARTICLE III, "BOARD AND COMMISSIONS," BY REVISING SECTION 2-83, "NUMBER OF MEMBERS AND TERMS OF SERVICE; ESTABLISHMENT OF PLACES," TO DELETE A REFERENCE TO THE DISCIPLINARY APPEALS BOARD; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Fort Worth City Code currently affords certain City employees the right to appeal some adverse employment actions to an appointed Disciplinary Appeals Board, which can either conduct the appeal hearing directly or designate a neutral hearing officer to do so; and

WHEREAS, disciplinary appeal hearings are scheduled on an as-needed basis and generally require one or more entire work days for completion; and

WHEREAS, the sporadic and time-intensive nature of disciplinary appeal hearings has resulted in on-going difficulty finding individuals who are willing and available to serve on the Disciplinary Appeals Board and conduct hearings directly; and

WHEREAS, over the last several years, hearings have increasingly been referred to hearing officers, who are neutral third-party professionals with extensive experience hearing and deciding labor and employment disputes; and

WHEREAS, the use of hearing officers with prior experience overseeing hearings allows proceedings to be conducted in a more consistent, efficient, and

expeditious manner than might be achieved from the use of an appointed citizen board, which might not include individuals familiar with a hearing process; and

WHEREAS, in an effort to minimize the burden on volunteer citizen appointees and to ensure that all disciplinary appeal proceedings are conducted in a consistent and efficient manner, staff recommends revising the City Code to provide for all disciplinary appeal hearings to be conducted by a neutral third-party hearing officer and to establish criteria for the selection and assignment of such hearing officers; and

WHEREAS, staff recommends that the current City Code provision addressing personnel regulations be repealed and reenacted to revise the process for adopting and amending the regulations in order to align more closely with state law and the City’s charter and to allow for more flexibility and adaptability as requirements evolve; and

WHEREAS, staff also recommends a conforming change to Section 2-83 of the City Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

SECTION 1.

That Chapter 2, “Administration,” Article V, “Human Resources,” Section 2-181, “Dismissal, suspension or demotion,” of the Code of the City of Fort Worth is hereby amended to divide the provision into subsections, to clarify language regarding department head designees, and to allow procedural issues to be addressed in the City’s personnel rules and regulations. As amended, Section 2-181 shall read as follows:

(a) The head or assistant head director of a city department or division head in which an employee is serving, or that individual’s designee, may, for any cause

specified in the Personnel Rules and Regulations concerning disciplinary action, take any of the following adverse employment actions against an employee:

(1) dismissal any employee who is covered by this article,

(2) suspend such employee suspension for more than ten (10) business days or

(3) demote such employee demotion in rank or position.

(b) Any adverse employment action taken under subsection (a) against an employee who is covered by this article , all of which shall be subject to the right of appeal given to such employee under this article and under the relevant City of Fort Worth Personnel Rules and Regulations, as contained in the city personnel manual. The department or assistant department head taking such disciplinary action shall forthwith prepare or cause to be prepared a written statement of the action taken with respect to such employee and the grounds for such action. Such statement shall contain a specification of facts which will inform the employee of the nature of the charges against the employee and will place the employee on fair notice of the basis for the disciplinary action. Within three (3) business days after a pre-disciplinary meeting is held, the department or division head or designee shall send or deliver a copy of such statement to the employee.

SECTION 2.

That Chapter 2, “Administration,” Article V, “Human Resources,” Section 2-182, “Disciplinary appeals board,” Section 2-183, “Appeals to the disciplinary appeals board,” and Section 2-184, “Personnel regulations,” of the Code of the City of Fort Worth, Texas (1986) are hereby repealed in their entirety.

SECTION 3.

That Chapter 2, “Administration,” Article V, “Human Resources,” is hereby amended to add a new Section 2-182, to be entitled “Disciplinary appeals process,” addressing jurisdictional and procedural matters related to an appeal. Section 2-182 shall read as follows:

Section 2-182 – Disciplinary appeal process.

(a) An appeal from an adverse employment action under Section 2-181(a) must comply with the requirements of this section and of the relevant provisions of the City of Fort Worth Personnel Rules and Regulations.

(b) Timely filing of all requests for review and notices of appeal required under the Personnel Rules and Regulations shall serve as conditions precedent to jurisdiction over the appeal. If an employee fails to timely file any request for review or notice of appeal, the appeal shall be automatically dismissed by the Human Resources Department, the appeal process shall be immediately terminated, and any further appeal rights shall be forfeited.

(c) If all jurisdictional requirements of subsection (b) and all other requirements under the Personnel Rules and Regulations for an employee to have an appeal hearing have been met, the Human Resources Department shall assign a hearing officer selected in accordance with Section 2-183.

(d) The hearing officer shall conduct the hearing in accordance with the procedures described in the Personnel Rules and Regulations.

(e) If an employee has been given proper notice of the date, time, and location of an appeal hearing and fails to appear, the hearing officer may dismiss the appeal on motion of the city or the hearing officer's own motion. For purposes of this provision notice shall be considered to be proper if it contains accurate information, is correctly addressed to the mailing address that the employee (or his legal representative) most recently provided to the Human Resources Department, and is sent by first class United States mail or common or contract carrier with postage or handling charges prepaid.

(f) After an appeal hearing has concluded, the hearing officer shall prepare findings of fact and recommendations for disposition, which shall be considered by the city manager. All such findings and recommendations must comply with the requirements of this section.

(g) A hearing officer's findings and recommendations shall be based solely on the facts placed in evidence during the appeal hearing.

(h) A hearing officer's findings of fact shall be limited to a determination of whether it has been established by a preponderance of the evidence that the facts that form the basis for the discipline occurred.

(i) If the hearing officer determines that the facts did occur, the hearing officer shall, based on the evidence presented, recommend either that the disciplinary action be upheld or, if applicable, be reduced to one of the following actions: suspension, demotion, probation, written warning, or oral warning. If the hearing officer determines that the facts did not occur as alleged, the hearing officer shall, based on the evidence presented, make recommendations as to an appropriate course of action, which shall be limited to reinstatement with or without back pay and benefits.

(j) In determining the amount of back pay and benefits to recommend, if any, the hearing officer shall take into account an employee's duty to mitigate and shall consider the monetary value of any pay and/or benefits that the employee actually earned or reasonably could have earned during the disciplinary period.

(k) No punitive damages, attorney's fees, or other relief shall be available to the employee, and a hearing officer may not recommend any remedy unless it is explicitly provided for under subsection (i).

(l) The hearing officer shall, in accordance with the procedures and deadlines outlined in the Personnel Rules and Regulations, forward his findings and recommendations to the Human Resources Department for presentation to the city manager.

(m) A hearing officer's findings and recommendations are not binding on the city manager. The city manager has the final authority to accept, modify, or reject any of the hearing officer's findings or recommendations and to take such action as the city manager determines is in the best interest of the city.

(n) This section applies to an employee's exercise of the rights afforded under this article. To the extent any law outside of this article or of the city code provides an employee with different or additional rights and/or establishes different requirements or deadlines, that other law shall govern the disposition of claims made under it.

SECTION 4.

That Chapter 2, "Administration," Article V, "Human Resources," is hereby amended to add a new Section 2-183, to be entitled "Designation of hearing officer," establishing criteria for the selection, engagement, and assigning of neutral, third-party hearing officers. Section 2-182 shall read as follows:

Section 2-183 – Designation of hearing officer.

(a) The Human Resources Department shall make all reasonable efforts to ensure that at all times the department maintains a roster of at least three neutral, third-party hearing officers who meet the requirements of this section and who have agreed to preside over disciplinary appeal hearings if available and requested to do so.

(b) In determining whether to appoint an individual to the roster of hearing officers, the Human Resources Department shall consider the individual's training and experience and shall endeavor to select individuals who: are familiar with

legal requirements applicable to employers and employees as well as the city's Personnel Rules and Regulations; have good analytical skills; have prior experience conducting administrative hearings or similar quasi-judicial proceedings; have experience issuing written findings of fact based on the evidence introduced; have experience issuing recommendations or orders applying law or policy to adduced facts; and have a demonstrated ability to write clearly and concisely and to put in writing how those facts show compliance with or violation of the law or policy at issue. A hearing officer may request to be removed from the roster. In addition, the director of the Human Resources Department or that individual's designee may, in his sole discretion, remove a hearing officer for any reason, including, but not limited to, demonstrating bias, failing to comply with all applicable requirements of this section and the Personnel Rules and Regulations, cancelling or postponing hearings without providing the department and the parties adequate advance notice, failing to meet deadlines, or producing written recommendations that do not demonstrate the skills and abilities described above.

(c) In selecting among qualified hearing officer candidates, the director of the Human Resources Department or that person's designee shall take into account the composition of the city's workforce and shall endeavor to provide a roster that is fairly representative of both sexes and of the various racial groups that comprise the employees of the city.

(d) An individual may not serve as a hearing officer if the individual or the individual's spouse or domestic partner is otherwise being compensated by the city in exchange for serving as an official, employee, temporary contract laborer, or vendor.

(e) A hearing officer is disqualified to hear an appeal, and shall disclose to the Human Resources Department in writing, if the hearing officer is:

(1) acting in place of a parent for,

(2) in a domestic partner relationship with, or

(3) related within the second degree by consanguinity or affinity to

any of the following individuals: the employee; the department head or designee who imposed discipline; or any witness.

A person is related within the second degree by consanguinity to the person's parents; grandparents; children; grandchildren; and the person's aunts, uncles, cousins, nieces, and nephews related by blood or adoption. A person is related within the second degree by affinity to the person's spouse; step-parents; step-grandparents; stepchildren; step-grandchildren; parents-in-law; children-in-law; and the person's aunts, uncles, cousins, nieces, and nephews related by marriage.

(f) A hearing officer is intended to serve as neutral third party with no allegiance or ties to the city or the employee. The Human Resources Department shall advise each hearing officer of the hearing officer's duty of impartiality. The

department may, in its discretion, require a hearing officer to issue an oath affirming awareness of and commitment to this duty.

(g) The Human Resources Department shall establish and implement a written process for maintaining the roster and assigning hearing officers to ensure hearing officers are assigned on an impartial, rotating, random basis and to ensure that neither party is allowed to request assignment or non-assignment of a particular hearing officer or to otherwise attempt to influence the hearing officer assignment process.

(h) A hearing officer shall preside over the assigned disciplinary appeal hearing and shall have the power and authority to administer oaths; to admit or exclude evidence; to issue orders compelling the attendance of witnesses and the production of documents; to issue other orders reasonably necessary for the fair, impartial, and efficient conduct of the assigned disciplinary appeal hearing; and to issue findings and recommendations in accordance with Section 2-182.

SECTION 5.

That Chapter 2, “Administration,” Article V, “Human Resources,” is hereby amended to add a new Section 2-184, to be entitled “Personnel rules and regulations,” charging the City Manager with adopting personnel rules and regulations. Section 2-182 shall read as follows:

Section 2-184 – Personnel rules and regulations.

(a) In this Article, the term “Personnel Rules and Regulations” means the policies, practices, guidelines, and work rules adopted in accordance with the terms of this Section.

(b) In accordance with the city manager’s duty under the City Charter to exercise control over City departments, the city manager or that individual’s designee shall, with advice and assistance from the Human Resources Department, develop, adopt, and promulgate Personnel Rules and Regulations for all City employees who are, directly or indirectly, under the city manager’s supervision and control.

(c) All Personnel Rules and Regulations shall be unbiased and merit-based.

(d) One or more alternative bodies of Personnel Rules and Regulations may be adopted for personnel who are governed by the state’s civil service laws to the extent such alternate rules and regulations are required in order to comply with state law or the terms of a binding labor agreement that has been negotiated in accordance with state law.

SECTION 6.

That Chapter 2, “Administration,” Article III, “Board and Commissions,” Section 2-83, “Number of members and terms of service; establishment of places,” of the Code of the City of Fort Worth is hereby amended to revise subsection (b) to repeal the entry referring to the Disciplinary Appeals Board.

SECTION 7.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 8.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 9.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to

any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 10.

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Assistant City Attorney

Mary Kayser, City Secretary

ADOPTED: _____

EFFECTIVE: _____