

ORDINANCE NO. 2018-15

AN ORDINANCE AMENDING CIVIL SERVICE RULES AND REGULATIONS, SPECIFICALLY THE PROVISION RELATING TO DEMOTIONS, SUSPENSIONS AND DISCHARGE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the Civil Service Commission is given the authority to recommend amendments of the Civil Service Rules and Regulations to the City Council as the governing authority; and

WHEREAS, the Civil Service Commission has presented their recommended changes to the City Council; and

WHEREAS, Nebraska Revised Statutes require the governing body of the municipality shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority; and

WHEREAS, both the Civil Service Commission and the City Council have determined that the following language regarding Demotions, Suspensions and Discharge should be amended to improve and facilitate the processes therein.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL of the City of Wayne, Nebraska, that:

Section 1. The following provision of the Civil Service Commission Rules and Regulations shall read as follows:

DEMOTIONS, SUSPENSIONS, AND DISCHARGE

Section A - Tenure of Employment.

The tenure of a person holding a position of employment under the Civil Service Act of the Wayne Code shall be only during good behavior.

Section B - Causes for Disciplinary Action.

Any such person may be removed or discharged, suspended with or without pay, demoted, reduced in rank, or deprived of vacation benefits, or other privileges, except ~~pension retirement~~ **pension** benefits, for any of the following reasons:

1. Incompetency, inefficiency or inattention to or dereliction of duty;
2. Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act or the rules and regulations adopted hereunder;

3. Mental or physical unfitness for the position which the employee holds;
4. Drunkenness or the use of intoxicating liquors, narcotics or any other habit-forming drug, liquid or preparation to such an extent that the use interferes with the efficiency of mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;
5. Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or
6. Any other act or failure to act which, in the judgment of the Civil Service Commissioners, is sufficient to justify the offender to be an unsuitable and unfit person to be employed in the public service.

Section C - Disciplinary Action Procedure.

1. No employee in the Civil Service who shall have been permanently appointed or inducted into Civil Service shall be removed, suspended, demoted or discharged, except for cause and then only upon the written accusation of the Police Chief, City Administrator or any citizen or taxpayer.
2. The written accusation shall set forth the alleged misconduct, charges, or grounds for investigation against the employee. The written accusation shall be filed by the complainant with the Secretary of the Civil Service Commission who shall forward a copy within twenty-four (24) hours after the filing (1) to the Police Chief; (2) to the City Administrator; and (3) to the employee personally or by certified mail.
3. The Police Chief shall have the authority to immediately suspend, with pay, an employee against whom such written accusation has been filed and shall immediately investigate the alleged misconduct, charges, or grounds against the employee. The Police Chief shall explain the basis of the employer's evidence to the employee and provide the employee an opportunity to represent his or her version of the circumstances which resulted in the filing of the written accusation. Within 10 days of completing the investigation, the Police Chief shall file a copy of the written accusation and results of the investigation with the City Administrator.

If the Police Chief's investigation reveals other misconduct, charges, or grounds, the Police Chief shall amend the written accusation to include the other misconduct, charges, or grounds by filing an amendment to the written accusation with the Secretary of the Commission. The Secretary shall forward a copy of the amended accusation to the City Administrator and employee.

The Police Chief shall recommend in writing to the City Administrator whether the alleged misconduct, charges, or grounds set forth in the written accusation shall be deemed: (1) to be without merit, (2) to not warrant disciplinary action, (3) to warrant disciplinary action less severe than removal, demotion, discharge, or suspension, with or without pay, such as an oral or written reprimand, or (4) to warrant removal, demotion, discharge, or suspension, with or without pay.

In the event that a Police Chief is being accused of a violation, the City Administrator shall follow the same procedures as are followed by the Police Chief in disciplining employees under the act.

4. Within ten (10) days after receiving a copy of the written accusation, the results of the investigation and the written recommendation of the Police Chief, the City Administrator shall decide to accept the recommendation of the Police Chief, or shall decide that the alleged misconduct, charges, or grounds for investigation against the employee set forth in the written accusation be deemed:
 - a. to be without merit,
 - b. to not warrant disciplinary action,
 - c. to warrant disciplinary action less severe than removal, demotion, discharge, or suspension, with or without pay, such as an oral or written reprimand, or
 - d. to warrant removal, demotion, discharge, or suspension, with or without pay.

The employee shall receive the decision of the City Administrator in writing within the same ten (10) day period.

5. Any employee so removed, suspended, demoted or discharged may, within ten (10) calendar days after receiving written notice of the City Administrator's decision, file a written demand for an investigation and public hearing by the Civil Service Commission. The employee shall file the request for the hearing with the Secretary of the Commission and simultaneously send a copy of such a request to the City Administrator. The failure to file such a request with the Secretary of the Commission within ten (10) calendar days of receipt of notice of the action by the City Administrator shall constitute a waiver of the employee's right to review by the Civil Service Commission and the City Administrator's decision shall become final.
6. Within seven (7) calendar days of receipt of the employee's notice of appeal, the City Administrator shall cause the following notice to be mailed or delivered to the employee and Secretary of the Commission:
 - a. A statement of the charge(s);
 - b. The names of the witnesses who will be called on behalf of the City Administrator and a general statement of the nature of their testimony;
 - c. Copies of the documents to be offered in support of the charge(s).
7. Within nine (9) calendar days of the filing of the written demand for an investigation and public hearing by the Commission, the employee shall mail or deliver the following upon the City Administrator and Secretary of the Commission who shall distribute the same to the individual Commission members:
 - a. A response to the statement of the charge(s);
 - b. The names of the witnesses who will be called on behalf of the employee and general statement of the nature of their testimony; and
 - c. Copies of the documents to be offered in defense of the charge(s).
8. Upon receipt of a written demand for an investigation and public hearing, the Commission shall conduct an investigation. The Commission may be represented in such investigation and public hearing by the City Attorney if authorized by the City Administrator. If the City Attorney does not represent the Commission, the Commission may be represented by special counsel appointed by the Commission for any such investigation and hearing. The

investigation shall consist solely of a review of the written documents and information submitted by the City Administrator and employee. The purpose of the investigation is to determine whether any individuals or documents should be subpoenaed by the Commission for the subsequent public hearing before the Commission to ultimately determine whether the City Administrator acted in good faith for cause. Good faith for cause shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

9. After the investigation, the Commission shall schedule a public hearing to be held no less than ten (10) nor more than twenty (20) calendar days from the date of filing of the employee's written demand for an investigation. The Commission shall notify the City Administrator and employee in writing at least five (5) calendar days prior to the date of the hearing, of the date, time and place of the hearing.
10. The parties may, by agreement and stipulation, continue the date of hearing to be held at a time more than twenty (20) calendar days from the date of filing of the employee's written demand for an investigation.
11. The parties shall have the right to amend their filings with the Civil Service Commission, provided reasonable notice is provided to the other party.
12. The City Administrator shall be permitted to appear in person and by counsel to present his or her case. The City Administrator may present evidence by testimony and documents and shall be permitted to cross-examine the employee's witnesses. At the hearing, the employee shall be permitted to appear in person and by counsel to present his or her defense. The employee may present evidence by testimony and documents and shall be permitted to cross-examine the witnesses called by the City Administrator.
13. The Commission may affirm the action taken by the City Administrator if such action is supported by a preponderance of the evidence. If the Commission finds that the removal, suspension, demotion or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or re-employment of such employee in the position or employment from which such employee was removed, suspended, demoted, or discharged, which reinstatement shall, if the Commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge.
14. After the hearing, in lieu of affirming the removal, suspension, demotion, or discharge, the Commission may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. No later than ten (10) calendar days after the hearing the Commission shall certify its findings in writing to the employee and the City Administrator. The City Administrator shall enforce the certified findings of the Commission.

15. The Civil Service Rules and Regulations shall be provided to every full-time law enforcement officer employed by the City of Wayne, and may be revised and/or updated from time to time ~~to comply with Nebraska Revised Statutes~~ as the Commission deems necessary. In the event that any of the foregoing rules and regulations are in conflict with Nebraska Statutes, the ~~Statute~~ Nebraska Statutes shall control.

Section 2. The City Council hereby adopts the Civil Service Rules and Regulations, as may be amended from time to time, and a copy of the current Civil Service Rules and Regulations are available upon request from the City Clerk.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby amended and repealed.

Section 4. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 1st day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk